

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RANDOLPH FRESHOUR and)	
VINCENZO ALLAN, each individually and)	
on behalf of similarly situated individuals,)	
)	Case No.: 1:23-cv-02667
Plaintiffs,)	
)	Hon. Virginia M. Kendall
v.)	
)	Magistrate Judge Hon. M. David Weisman
CERENCE INC., a Delaware corporation,)	
)	
Defendant.)	

**DEFENDANT CERENCE INC.’S OPPOSITION TO PLAINTIFFS’ MOTION
AND MEMORANDUM OF LAW IN SUPPORT OF CLASS CERTIFICATION**

Matthew C. Wolfe
Amy Y. Cho
Mehgan E. H. Keeley
Samuel G. Bernstein
Elise N. Malin
SHOOK, HARDY & BACON LLP
111 South Wacker Drive, Suite 4700
Chicago, IL 60606
Tel: (312) 704-7700
mwolfe@shb.com
acho@shb.com
mkeeley@shb.com
sbernstein@shb.com
emalin@shb.com

Counsel for Defendant Cerence Inc.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	3
I. The Relevant Voice, Speech, and Cloud Technology.	3
II. Plaintiffs’ BIPA Claims and Proposed Class.....	4
LEGAL STANDARD.....	5
ARGUMENT.....	6
I. The Proposed Class Fails the Requirements of Rule 23(b)(3) Because a Class Action Is Not a Superior Method to Fairly and Efficiently Adjudicate Plaintiffs’ Claims, and Common Issues Do Not Predominate.....	6
A. Class-wide resolution is not superior.	7
1. The proposed class definition contains no objective criteria to determine who is a class member.	7
a. There is no objective way to determine <i>who</i> used the technology.....	10
b. There is no objective way to determine which users’ data was sent to the cloud, because that depends on <i>what</i> the users said.....	13
c. There is no objective way to determine <i>where</i> users used the technology.....	14
d. There is no objective way to determine <i>when</i> each person used the technology.....	14
2. The absence of an objective method for determining class members leads to a class that would rely entirely on claimants’ “because I say so” submissions.....	15
3. A class action is not superior or a fair method of adjudication because potential damages are disproportionate to Plaintiffs’ alleged harm.....	16
B. Common questions do not predominate over individual issues.....	18

1.	Individualized inquiries are required to determine if class members used the technology and if their data was ever sent to Cerence from Illinois during the relevant time period.....	19
2.	Individualized inquiries are required to determine if class members consented under BIPA 15(b) and (d).	19
3.	Individualized inquiries are required to determine whether each class member waived BIPA rights.....	20
4.	Individualized inquiries are required to prove and calculate damages.....	21
II.	Plaintiffs also Fail to Meet Their Burden on Adequacy and Typicality.	22
1.	Allan is not a member of the defined class because his data was never transmitted to Cerence.	22
2.	Plaintiffs are subject to unique defenses.	23
3.	Freshour cannot be the class representative because he is not interested in fulfilling his duties.	24
	CONCLUSION.....	25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Al Haj v. Pfizer Inc.</i> , 2020 WL 1330367 (N.D. Ill. Mar. 23, 2020).....	21
<i>Alvarado v. International Laser Products, Inc. et al.</i> , No. 18-cv-7756, 2019 WL 337995 (N.D. Ill. June 19, 2019).....	10
<i>Andrews v. Chevy Chase Bank</i> , 545 F.3d 570 (7th Cir. 2008)	7, 21
<i>Amchem Prods. Inc. v. Windsor</i> , 521 U.S. 591, 624 (1997).....	18
<i>Arandell Corp. v. Xcel Energy Inc.</i> , 149 F.4th 883 (7th Cir. 2025)	11
<i>Beaton v. SpeedyPC Software</i> , 907 F.3d 1018 (7th Cir. 2018)	23
<i>Blair v. Equifax Check Servs., Inc.</i> , 181 F.3d 832 (7th Cir. 1999)	3
<i>Briscoe v. Health Care Service Corp.</i> , 337 F.R.D. 158 (N.D. Ill. 2020).....	9
<i>CE Design Ltd. v. King Architectural Metals, Inc.</i> , 637 F.3d 721 (7th Cir. 2011)	3, 5, 23
<i>Clark v. Bumbo Int'l Trust</i> , 2017 WL 3704825 (N.D. Ill. 2017)	12
<i>Cothron v. White Castle System, Inc.</i> , 216 N.E.3d 918 (Ill. 2023).....	17
<i>Dancel v. Groupon</i> , 949 F.3d 999 (7th Cir. 2019)	<i>passim</i>
<i>Duron v. Unifocus</i> , No. 18-cv-6479 (N.D. Ill. Dec. 10, 2024).....	24
<i>Eddlemon v. Bradley Univ.</i> , 65 F.4th 335 (7th Cir. 2023)	21

<i>Eubank v. Pella Corp.</i> , 753 F.3d 718 (7th Cir. 2014)	24, 25
<i>G.T. v. Samsung Elec. Amer., Inc.</i> , 742 F. Supp. 3d 788 (N.D. Ill. 2024)	1
<i>Greene v. Mizuho Bank, Ltd.</i> , 327 F.R.D. 190 (N.D. Ill. 2018)	22
<i>Halliburton Co. v. Erica P. John Fund, Inc.</i> , 573 U.S. 258 (2014)	5, 6
<i>Howe v. Speedway, LLC</i> , No. 19-cv-01374, 2024 WL 4346631 (N.D. Ill. Sept. 29, 2024)	10
<i>In re Estate of Ferguson</i> , 313 Ill. App. 3d 931 (2d Dist. 2000)	20
<i>In re Facebook Biometric Info. Privacy Litig.</i> , 326 F.R.D. 535, 542 (N.D. Cal. 2018)	10
<i>In re Rhone-Poulenc Rorer Inc.</i> , 51 F.3d 1293 (7th Cir. 1995)	3, 7
<i>In re Trans Union Corp. Privacy Litig.</i> , 211 F.R.D. 328 (N.D. Ill. 2002)	16, 17
<i>Johnson v. Yahoo! Inc.</i> , 2018 WL 835339 (N.D. Ill. Feb. 13, 2018)	18
<i>Johns, et al. v. Paycor, Inc.</i> No. 20-cv-00640, 2025 WL 947914 (S.D. Ill. Mar. 28, 2025)	10
<i>Koos v. First Nat’l Bank of Peoria</i> , 496 F. 2d 1162 (7th Cir. 1974)	23
<i>Lake County Grading Co. of Libertyville, Inc. v. Advance Mechanical Contractors, Inc.</i> , 275 Ill. App. 3d 452 (2d Dist. 1995)	20
<i>Langendorf v. Skinnygirl Cocktails, LLC</i> , 306 F.R.D. 574 (N.D. Ill. 2014)	8, 9, 21
<i>Lipton v. Chattem, Inc.</i> , 289 F.R.D. 456 (N.D. Ill 2013)	21
<i>McGoveran v. Amazon Web Servs., Inc.</i> , 2024 WL 4626253 (D. Del. Oct. 30, 2024)	14

<i>Messner v. Northshore Univ. HealthSystem</i> , 669 F.3d 802 (7th Cir. 2012)	6, 7, 18, 19
<i>Morris v. Wow Bao, LLC</i> , No. 2017-CH-01229 (Cir. Ct. Cook Cnty. Nov. 17, 2021).....	10
<i>Mullins v. Direct Digital LLC</i> , 795 F.3d 654 (7th Cir. 2015)	8
<i>Murray v. E-Trade Fin. Corp.</i> , 240 F.R.D. 392 (N.D. Ill. 2006).....	25
<i>Oshana v. Coca-Cola Co.</i> , 472 F.3d 506 (7th Cir. 2006)	7, 8, 11, 12
<i>Palacios v. H&M Hennes & Mauritz, LP</i> , No. 18-CH-16030 (Cir. Ct. Cook Cnty. Mar. 16, 2023).....	10
<i>Patel v. Facebook, Inc.</i> , 932 F.3d 1264, 1277 (9th Cir. 2019).	10
<i>Physicians Healthsource, Inc. v. Allscripts Health Sols., Inc.</i> , 254 F. Supp. 3d 1007 (N.D. Ill. 2017)	24, 25
<i>Pruitt v. Pers. Staffing Grp., LLC</i> , 2020 WL 3050330 (N.D. Ill. June 8, 2020)	24
<i>Randall v. Rolls-Royce Corp.</i> , 637 F.3d 818 (7th Cir. 2011)	22
<i>Rogers v. BNSF Ry. Co.</i> , No. 19-cv-3083, 2022 WL 854348, at *4 (N.D. Ill. Mar. 22, 2022)	10
<i>Sherwin v. Samsung Elecs. Am., Inc.</i> , 2019 WL 10854535 (N.D. Ill. 2019)	23
<i>Schwartz v. Supply Network, Inc.</i> , 2024 WL 4871408 (N.D. Ill. Nov. 22, 2024)	17
<i>Smith-Brown v. Ulta Beauty, Inc.</i> , 335 F.R.D. 521 (N.D. Ill. 2020).....	18
<i>Strow v. B&G Foods, Inc.</i> , 348 F.R.D. 446 (N.D. Ill. 2025).....	7, 9, 12
<i>Thompson v. Matcor Metal Fabrication (Illinois) Inc.</i> , No. 2020-CH-00132 (Cir. Ct. Tazewell Cnty. June 28, 2022)	10

Tyson Foods, Inc. v. Bouaphakeo,
146 S. Ct. 1036 (2016).....7, 19

Van v. Ford Motor Co.,
332 F.R.D. 249 (N.D. Ill. 2019).....6, 18

West v. Carr,
337 F.R.D. 181 (W.D. Wis. 2020)9

Wooley v. Jackson Hewitt, Inc.,
2011 WL 1559330 (N.D. Ill. Apr. 25, 2011)20

Zellmer v. Meta Platforms, Inc.,
104 F.4th 1117 (9th Cir. 2024)1

Statutes

740 ILCS 14/15, *et seq.* (“BIPA”)5, 6, 17, 19

Other Authorities

FED. R. CIV. P. 23, *et. seq.*..... *passim*

INTRODUCTION

The proposed class is untenable. Plaintiffs claim that Cerence violated their BIPA rights by collecting data through the “Hey Mercedes” speech-recognition feature, but their class is not tethered to their claims and offers no objective way to identify class members. Standing alone, Plaintiffs’ class definition will not identify a single person who had their audio data transmitted to Cerence. Rather, the proposed class will depend entirely on class members’ subjective reporting of their use of the “Hey Mercedes” speech-recognition feature. Furthermore, as defined, the class is full of uninjured members and would require a mass of individualized inquiries to determine who has a claim.

Plaintiffs have not proposed an objective or reliable method to determine who is a member of the class. Under Seventh Circuit law, that is fatal to their Motion. *See* Section I.A, *infra*. Moreover, in their efforts to create an expansive class of “Hey Mercedes” users, they concede that Cerence has no way to identify Plaintiffs or any other purported class member – which ultimately will be fatal to their BIPA claims on the merits. *See, e.g., Zellmer v. Meta Platforms, Inc.*, 104 F.4th 1117, 1124 (9th Cir. 2024) (“biometric identifiers must *identify*”);¹ *G.T. v. Samsung Elec. Amer., Inc.*, 742 F. Supp. 3d 788, 799-800 (N.D. Ill. 2024) (BIPA only governs the collection of data that *can identify individuals*). Class certification may be common in BIPA cases, but the absence of a class list or database of users’ names distinguishes this case from every BIPA case relied upon by Plaintiffs. To try to fill that gap, Plaintiffs argue the class is ascertainable by claiming that they could piece together a class from various third-party sources and a declaration by a purported expert. Those sources do not come close to solving the problem. In fact, at her deposition, Plaintiffs’ expert disavowed the points that Plaintiffs cite her report to support.

¹ Emphases added unless otherwise noted.

For these reasons, the proposed class flunks Rule 23's requirements. Plaintiffs ask this Court to certify the class under Rule 23(b)(3), which requires a showing that common questions predominate over individual ones and that a class action is a superior method to fairly and efficiently adjudicate the matter. But a class action is certainly not a superior method when the class: lacks objective criteria to ascertain members; includes unharmed members; and seeks damages that are grossly disproportionate to the alleged harm. *See* Section I.A. Nor can Plaintiffs show that common questions predominate, primarily because their boilerplate "common questions" are overwhelmed by dispositive, user-by-user inquiries, all of which are fundamental building blocks of their claims. To name a few, all putative class members' claims require findings regarding: whether a person even used the technology; how they used it; if they used it in Illinois; and whether they used it during the lengthy carve-out period when Cerence did not even service the Mercedes-Benz U.S. cloud—that is, when no data at all was transmitted from those vehicles to Cerence. *See* Section I.B. More individualized inquiries are involved with determining: whether users consented to the transmission of data; whether users waived BIPA rights; and how to calculate damages. *Id.*

The named Plaintiffs also do not qualify as adequate class representatives with typical claims. FED. R. CIV. P. 23(a)(1), (4). By definition, Plaintiff Allan is not even a member of his own proposed class. Individualized defenses exist as to both Plaintiffs. And Plaintiff Freshour is completely uninterested in being a representative. For each of these independent reasons, the named Plaintiffs are incapable of adequately representing the proposed class. *See* Section II.

In summary, this is the kind of class that that the Seventh Circuit has cautioned courts against allowing. The class is not objectively defined, will require time-consuming, burdensome, and expensive mini-trials on individualized issues, and would be messy, unpredictable, and a

wasteful use of resources. “Certification as a class action can coerce a defendant into settling on highly disadvantageous terms regardless of the merits of the suit.” *CE Design Ltd. v. King Architectural Metals, Inc.*, 637 F.3d 721, 723 (7th Cir. 2011); *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832 (7th Cir. 1999) (expressing same concerns); *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293 (7th Cir. 1995) (same). Plaintiffs’ ploy for a class action plainly is designed to leverage exactly these sorts of perverse incentives. The motion for class certification should be denied.

BACKGROUND

As is explained below, Cerence is a technology vendor that sells software and services to automobile manufacturers. Cerence provides its customers with a variety of software options to choose from, purchase, and install into their vehicles before they are sold to consumers. Cerence does not sell its software to, or receive personally identifying information, like names or email addresses, from the end users of its technology.

I. The Relevant Voice, Speech, and Cloud Technology.

The technology now² at issue in this case is Cerence’s automated speech-recognition (“ASR”) technology in the MBUX Voice Assistant. *See* Mot. at 4-5. ASR recognizes spoken words, without any identifying features, and translates those words from speech to text to execute commands (*e.g.*, “turn on the radio”). Ex. 1, Hamerich Dep. Tr. 40:5-11, 117:5-118:6. To use the MBUX speech command service, a user can either press the “push-to-talk” button or say the wakeup word (“Hey Mercedes”). Ex. 1, Hamerich Dep. Tr. 64:25-65:1. Every Cerence witness testified that ASR has no biometric component and does not make it possible for Cerence to

² The technology at issue has evolved throughout the life of the case, but Cerence understands Plaintiffs’ theory to now exclusively focus on the ASR technology.

identify a user by their voice. *E.g.*, Ex. 1, Hamerich Dep. Tr. 94:5-7.³ Anyone in the vehicle—like a one-time passenger, not just the owner or driver—can give a speech command with the ASR technology. *See* Compl., ECF No. 63, ¶¶ 1, 25, 41 (alleging passengers can interact with ASR); Ex. 2, Tropp Dep. 137:7-138:22 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 1, Hamerich Dep. Tr. 40:5-11. [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 132:11-21; Ex. 3, Ex. 2 to Hamerich Dep. Tr. The MBUX Voice Assistant [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 4, Barton Dep. Tr. 45:11-46:8, 123:3-6.

During the statutory period, [REDACTED]

[REDACTED] Ex. 5, Tsuboyama Dec. ¶ 9. Before that, [REDACTED]

for MBUX in the United States. *Id.* ¶ 6-10. [REDACTED]

[REDACTED] *Id.* ¶ 11.

II. Plaintiffs' BIPA Claims and Proposed Class.

Plaintiffs are Mercedes-Benz owners who allege that Cerence violated BIPA by collecting, storing, and disclosing their voiceprints when they used MBUX technology. Compl., ECF No. 63,

³ The parties are currently conducting expert discovery relating to merits issues—namely, whether the ASR technology captures a “voiceprint.”

¶¶ 4-5, 46, 52. Plaintiff Freshour’s vehicle is equipped with speech-recognition technology, including the “Hey Mercedes” feature. Ex. 6, Freshour Dep. Tr. 28:21-24. He has used it “constantly” since he bought it in 2022, and he pays \$150 annually to renew the services. *Id.* at 29:13-15, 45: 8-15; Ex. 7, MBUSA_0101; Ex. 8, FRESHOUR_000112, Ex. 9, FRESHOUR_000147.

Plaintiff Allan has owned three Mercedes-Benz vehicles that he alleges are relevant here. Ex. 10, Allan Dep. Tr. 35:20-36:6. Allan claims he used the speech-recognition technology across all three vehicles in or around November 2019 through early to mid 2023. *Id.* at 36:18-19, 40:11-20, Ex. 11, MBUSA_0068.

Plaintiffs seek relief under BIPA Sections 15(b) and (d), which impose notice and consent requirements on entities that collect, store, and/or disclose voiceprints. 740 ILCS 14/15(b), (d). Relatedly, they seek to represent a putative class of individuals. Plaintiffs exclude from the class “all individuals whose entire period of ownership, lease, or use of the MBUX Voice Assistant [REDACTED]

[REDACTED] Mot. at 9. This carve-out excludes Plaintiff Allan from the class, although he requests certification as a class representative. *See* Ex. 11, MBUSA_0068, Allan Dep. Tr. 39:19-20, 40:11-20, 62:4 (used technology from in or around November 2019 through early 2023); Ex. 5, Tsuboyama Dec. ¶ 9 [REDACTED]

[REDACTED]; Motion for Summary Judgment as to Plaintiff Allan, also filed today.

LEGAL STANDARD

Plaintiff bears the burden of proving that class certification is appropriate. *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014). The Court must conduct a “rigorous analysis” before certifying a class. *CE Design Ltd.*, 637 F.3d at 723 (vacating certification). In

doing so, the Court must find that Plaintiffs have proved by a preponderance of the evidence that the putative class satisfies each of the four requirements of Federal Rule of Civil Procedure 23(a)—numerosity, typicality, commonality, and adequacy of representation—and meets the criteria for one of the three types of class actions set forth in Rule 23(b). *Halliburton Co.*, 573 U.S. at 275 (plaintiff needs to “actually *prove*—not just plead—that the proposed class satisfies each requirement”). Because Plaintiffs seek certification under Rule 23(b)(3), they must also show that “questions of law or fact common to the class members predominate over individualized issues and that a class action is the superior method of adjudicating the case.” FED. R. CIV. P. 23(b)(3).

To prove a claim under BIPA Section 15(a), a plaintiff needs to prove that the defendant “collect[ed], capture[d], purchase[d], receive[d] through trade, or otherwise obtain[ed] a person’s or a customer’s biometric identifier or biometric information” without complying with the statute’s notice and consent requirements. 740 ILCS 14/15(b). Relatedly, Section 15(d) requires proof that a defendant was “in possession of biometric identifiers or biometric information” and “disclose[d]” or “disseminate[d]” it without informed consent. *Id.* at 14/15(d). Applied here, that means Plaintiffs and class members will need to prove that Cerence collected and/or disclosed their voiceprints without consent.

ARGUMENT

I. The Proposed Class Fails the Requirements of Rule 23(b)(3) Because a Class Action Is Not a Superior Method to Fairly and Efficiently Adjudicate Plaintiffs’ Claims, and Common Issues Do Not Predominate.

To show that a class action satisfies “predominance” under Rule 23(b)(3), Plaintiffs must show that “common questions represent a significant aspect of [a] case and . . . can be resolved for all members of [a] class in a single adjudication.” *Van v. Ford Motor Co.*, 332 F.R.D. 249, 288 (N.D. Ill. 2019), quoting *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 815 (7th Cir. 2012). “If, to make a *prima facie* showing on a given question, the members of a proposed class

will need to present evidence that varies from member to member, then it is an individual question.” *Id.*, quoting *Messner*, 669 F.3d at 815, and *Tyson Foods, Inc. v. Bouaphakeo*, 146 S. Ct. 1036, 1045 (2016). Plaintiffs also need to show that a class action is a superior method to fairly and efficiently adjudicate their claims. FED. R. CIV. P. 23(b)(3). As shown next, Plaintiffs do not meet their burden on either element.

A. Class-wide resolution is not superior.

In analyzing superiority, the court considers whether a class action or individual trials would be a more fair and efficient method to adjudicate the controversy. FED. R. CIV. P. 23(b)(3). Courts consider “the likely difficulties in managing a class action” and “class members’ interests in individually controlling” their own cases. *Id.* “If the class certification only serves to give rise to hundreds or thousands of individual proceedings requiring individually tailored remedies, it is hard to see how common issues predominate or how a class action would be the superior means to adjudicate the claims.” *Andrews v. Chevy Chase Bank*, 545 F.3d 570, 577 (7th Cir. 2008) (vacating certification of class that “would not promote the primary purposes of the class-action mechanism: judicial economy and efficiency”); *see also In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d at 1300 (certification risking undue settlement pressure “need not be tolerated when the alternative exists of submitting an issue to multiple juries”). For a number of reasons, Plaintiffs’ proposed class action is not a tenable, let alone superior, method for litigating their BIPA claims that Cerence unlawfully collected and disclosed their voiceprints.

1. The proposed class definition contains no objective criteria to determine who is a class member.

In the Seventh Circuit, ascertainability is a prerequisite to class certification under the requirements of Rule 23 (most often, it is evaluated under superiority). *Strow v. B&G Foods, Inc.*, 348 F.R.D. 446, 448 (N.D. Ill. 2025); citing *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 513 (7th

Cir. 2006). A class sought under Rule 23(b)(3) must be “defined clearly and based on objective criteria.” *See Mullins v. Direct Digital LLC*, 795 F.3d 654, 659 (7th Cir. 2015). “Class definitions have failed this requirement when they were too vague or subjective.” *Id.* at 657. “Vagueness is a problem because a court needs to be able to identify who will receive notice, who will share in any recovery, and who will be bound by a judgment.” *Id.* at 660.

To avoid these complications, the Seventh Circuit and courts in this district refuse to certify classes that are not clearly defined – especially when the class definition relies upon the subjective say-so of class members, or potentially includes many unharmed class members. The Seventh Circuit’s decision in *Oshana* illustrates this principle. *Oshana* was a consumer-fraud case. The plaintiff proposed a class of people who purchased fountain Diet Coke and alleged that they were deceived because the fountain product (which contained saccharin) and the bottled product (which did not) contained different artificial sweeteners. 472 F.3d 506, 513 (7th Cir. 2006). The Seventh Circuit affirmed the denial of class certification, reasoning that basing the class on a purchase was too indefinite: “Some people may have bought fountain Diet Coke *because it contained* saccharin, and some people may have bought fountain Diet Coke *even though* it had saccharin.” *Id.* at 514 (emphasis in original). “As such, the proposed class is not sufficiently identifiable or definite.” *Id.* at 515.

Since *Oshana*, numerous cases have applied similar reasoning. For instance, a plaintiff in another consumer-fraud action moved to certify a class of persons who purchased the product at issue. *Langendorf v. Skinnygirl Cocktails, LLC*, 306 F.R.D. 574, 578-79 (N.D. Ill. 2014). The court denied certification because the plaintiff “ha[d] not offered any method by which the court could find out who the purchasers were” or any “evidence that *any records exist that show who purchased the offending product*, when, or where.” *Id.* at 579. Although “[t]he identities of the

class members need not be known at this stage,” the court explained, “there must be some objective criteria by which the identities can be determined.” *Id.* at 578. *See also Strow*, 348 F.R.D. at 449-50 (recent decision denying certification for similar reason); *Briscoe v. Health Care Service Corp.*, 337 F.R.D. 158, 164-65 (N.D. Ill. 2020) (same); *West v. Carr*, 337 F.R.D. 181, 187-88 (W.D. Wis. 2020) (class definition “ma[d]e it feasible to identify the larger group of...potential class members, [but] that does not answer the question of whether they *are* members of the class” without “individualized assessments of each potential class member[]”).

In this case, Plaintiffs’ definition relies upon vehicle lease and purchase information. But that information does not answer the key threshold question in this case, which is: **Did class members use the MBUX speech-recognition technology?** Without answering that question, there is no way to know if someone is in the class. *See Dancel v. Groupon*, 949 F.3d 999, 108 (7th Cir. 2019) (“starting point” of class-certification determination is “the substantive elements of plaintiffs’ cause of action”). But Plaintiffs don’t even try to answer it. They propose no objective method to identify *who* used the technology, *what* software or features were used (which would determine whether [REDACTED]) or *when* and *where* class members used the technology. As discussed below, to identify who actually used the supposedly offending technology in a way that implicates BIPA, *each* of these questions *must* be asked. Plaintiffs ask *none* of them and therefore their class definition fails for lack of objectivity and vagueness.

a. There is no objective way to determine *who* used the technology.

This case is different from every BIPA class-certification decision relied upon by Plaintiffs⁴ because there is no established class list of Cerence voice or speech technology users whatsoever. Ex. 12, Peak Dep. Tr. 74:9-13 (Plaintiffs’ expert not aware of Cerence “having a list or specific information about what individuals should be class members”). It is undisputed that Cerence does not know who uses its technology. *See* Ex. 1, Hamerich Dep. Tr. 132:15-133:2 ([REDACTED]); Ex. 15, Cashman Dep. Tr. 206:5-14 ([REDACTED]); [REDACTED]). [REDACTED] [REDACTED] *See* Ex. 4, Barton Dep. Tr. 43:14-44:1. Simply owning or leasing a Mercedes-Benz does not mean that the individual used the “Hey Mercedes” technology, nor does the fact that the person created a Mercedes Me Connect account or that the MBUX Voice Assistant was equipped and active in the vehicle. In fact, people can (and *do*) create an account for, own, or lease a Mercedes-Benz but choose not to use the speech-recognition feature. Plaintiff Allan did exactly that. Ex. 10, Allan Dep. Tr. 39:19-20, 40:11-20. *See also* Ex. 15,

⁴ *See* Mot. at 2 n.3, citing *Rogers v. BNSF Ry. Co.*, No. 19-cv-3083, 2022 WL 854348, at *4 (N.D. Ill. Mar. 22, 2022) (certifying class in BIPA case based on fingerprints collected during timekeeping where defendant-employer had list of people who used timeclocks); *Palacios v. H&M Hennes & Mauritz, LP*, No. 18-CH-16030 (Cir. Ct. Cook Cnty. Mar. 16, 2023) (same); *Thompson v. Matcor Metal Fabrication (Illinois) Inc.*, No. 2020-CH-00132 (Cir. Ct. Tazewell Cnty. June 28, 2022) (same); *Johns, et al. v. Paycor, Inc.*, No. 20-cv-00640, 2025 WL 947914 (S.D. Ill. Mar. 28, 2025) (same); *Alvarado v. International Laser Products, Inc. et al.*, No. 18-cv-7756, 2019 WL 337995 (N.D. Ill. June 19, 2019) (same); *Howe v. Speedway, LLC*, No. 19-cv-01374, 2024 WL 4346631 (N.D. Ill. Sept. 29, 2024) (same); *Morris v. Wow Bao, LLC*, No. 2017-CH-01229 (Cir. Ct. Cook Cnty. Nov. 17, 2021) (certifying class in BIPA case based on face geometry or repeat customers); *In re Facebook Biometric Info. Privacy Litig.*, 326 F.R.D. 535, 542 (N.D. Cal. 2018) (certifying class in BIPA case based on face geometry where Facebook has a list of users with Facebook accounts), *aff’d sub nom. Patel v. Facebook, Inc.*, 932 F.3d 1264, 1277 (9th Cir. 2019).

Cashman Dep. Tr. 39:9-22 (does not use the speech-recognition feature in his car); Ex. 12, Peak Dep. Tr. 43:6-11 (Plaintiffs' expert doesn't either).

Thus, as defined by Plaintiffs, the class will include many people who *never* used the technology, such as: individuals who owned or leased a vehicle but never used the “Hey Mercedes” feature; individuals who owned or leased a Mercedes-Benz vehicle but did not personally use the vehicle (perhaps a family member did instead); and individuals who purchased a Mercedes-Benz in Illinois but never used the “Hey Mercedes” feature in Illinois (it is not uncommon for purchasers of vehicles to buy a car in one state but have it delivered to another; both Plaintiffs in this case did just that). MBUSA_0001 (Freshour purchased vehicles in Missouri), Ex. 13 and MBUSA_0016 (Allan purchased vehicle in Ohio), Ex. 14.

Inversely, a person who does not own, lease, or create a Mercedes Me Connect account for a vehicle can still use the MBUX Voice Assistant's speech-recognition software while driving or riding in someone else's vehicle. The Complaint itself contemplates this situation. Compl., ECF No. 63, ¶¶ 1, 25, 36, 41 (alleging passengers used technology); *see also* Ex. 2, Tropp Dep. Tr. 138:18-22 ([REDACTED]). But Plaintiffs propose no way to solve this problem for class-certification purposes, and their expert never considered it. Ex. 12, Peak Dep. Tr. 91:6-23, 93:4-13.⁵

The Seventh Circuit and courts in this district reject certification of classes that are defined so broadly that they could include unharmed people without claims. *See, e.g., Oshana*, 472 F.3d at 509, 514 (denying certification where class was vaguely defined could have included many

⁵ Where, as here, the defendant offers admissible evidence that, if credited, would mean individual questions would predominate over common questions, then the district court must “investigate[] the realism” of the expert evidence “in light of the defendants' counterarguments,” and take evidence to that end. *Arandell Corp. v. Xcel Energy Inc.*, 149 F.4th 883, 894 (7th Cir. 2025). Flaws in Plaintiffs' expert's opinions and methodology are further discussed in Cerence's Motion to Exclude, also filed today.

people who were not deceived); *Strow*, 348 F.R.D. at 449-50 (denying certification because class included people who suffered no injury); *Clark v. Bumbo Int'l Trust*, 2017 WL 3704825, at *4 (N.D. Ill. 2017) (denying certification because class contained “a great many persons who could not have been harmed by defendant’s alleged representations”). In *Oshana*, *Strow*, and *Clark*, the classes broadly covered people who simply purchased or used the product, and the courts held that was too broad and vague. Plaintiffs’ proposed class is even less definite: it is not even limited to people who actually *used* the technology, just people who *might have*, and does not contemplate how to reach non-owners of the cars.

Realizing this flaw in their theory, Plaintiffs rely on a declaration by a “class action notice expert” to argue that they could theoretically find class members by piecing together VINs with other data available from third parties. “Accordingly,” Plaintiffs claim, citing only their expert’s declaration, “the identities of the individual Class members are readily ascertainable, and any individual’s status as a Class member can be objectively determined.” Mot. 12. That reasoning fell apart when Cerence deposed the Plaintiffs’ expert. She testified that she had not “developed a notice plan for this case,” and her declaration was limited to what is typically done in automotive cases in which owners or lessors are suing for product defects in their cars. Ex. 12, Peak Dep. Tr. 62:23-63:3; 74:21-25; 87:1-88:23. That’s not the case here. *See id.* 75:22-76:11.

Furthermore, Plaintiffs’ expert had no idea what kind of information was available to the very third parties she claimed she would rely upon. She has no personal experience working with them, did not know if their data was reliable, and didn’t know how to “refine” the data – even though she said in her declaration that doing so would be an important step in the process. *Id.* 68:9-70:25; 73:4-13; 81:18-83:25. Her declaration essentially consisted of a copy-and-paste job from other declarations used in automotive product-defect cases. *Id.* 79:1-13. Unsurprisingly, then,

Plaintiffs' expert made clear that she has "no opinion on ascertainability," nor "any views on that issue," nor any opinion or views on "whether any individual's status as a class member can be objectively determined." *Id.* 42:6-19 (that was "not within the scope of what [she was] doing in this case"). Of course, Plaintiffs rely on her for exactly those points. Mot. 12. Without her, their Motion collapses like a house of cards.

In sum, although Plaintiffs' expert proposed searching VINs in a third-party's database, she [REDACTED] Ex. 12, Peak Dep. Tr. 81:18-83:14. In any event, vehicle ownership does not determine who used the technology. Thus, *who* used the technology can only be reported by claimants themselves.

b. There is no objective way to determine which users' data was sent to the cloud, because that depends on *what* the users said.

The Cerence speech-recognition technology in the MBUX Voice Assistant relies upon an [REDACTED]. If a user gives a command [REDACTED] [REDACTED]. Ex. 1, Hamerich Dep. Tr. 39:3-40:11 ([REDACTED] [REDACTED]). On the other hand, [REDACTED] [REDACTED]. *Id.*

For this case, the above is important because it is not enough for a user to say that they used "Hey Mercedes" technology in the relevant Mercedes-Benz vehicles. They also need to confirm *what* they said after activating the technology. If a user only used [REDACTED] [REDACTED] Just like with determining *who* the users were, *what* they said can only be reported by the claimants themselves.

c. There is no objective way to determine *where* users used the technology.

BIPA only governs the collection and possession of biometric information within Illinois. *McGoveran v. Amazon Web Servs., Inc.*, No. 1:20-cv-01399-SB, 2024 WL 4626253, at *3-4 (D. Del. Oct. 30, 2024) (BIPA does not apply to extraterritorial activities). Cerence’s data servers are outside of Illinois. Ex. 15, Cashman Dep. Tr. 46:3-4, 67:19-68:5. And it is likely that many people who purchased vehicles in Illinois used the technology in them outside of Illinois. Both named Plaintiffs, for example, purchased their vehicles in other states. *See* Ex. 10, Allan Dep. Tr. 49:1-2 (Allan purchased vehicle from Ohio dealership); Ex. 7, MBUSA_0101 (Freshour purchased vehicle from Missouri dealership). To fill this gap in figuring out where each person used Cerence’s technology, Plaintiffs suggest relying on sales data from MBUSA. But the sales data is

[REDACTED]

[REDACTED] *See* Ex. 4, Barton Dep. Tr. 56:18-57:2. Further, MBUSA’s [REDACTED]

[REDACTED]. *Id.* 68:11-14. Plaintiffs’ “class action notice expert” agreed that identifying class members will require determining whether users were in Illinois when their voiceprint was allegedly captured, but she had no opinion on how that should be done. Ex. 12, Peak Dep. Tr. 99:13-101:3. Plaintiffs offer no evidence that they can objectively determine whether people used the technology in Illinois. Again, only the claimants themselves can offer that.

d. There is no objective way to determine *when* each person used the technology.

The class definition carves out a five-and-a-half year period when [REDACTED]

[REDACTED] Mot. at 9; Ex. 5, Tsuboyama Decl. ¶ 10. Because the

carve-out period is longer than the remainder of the statutory period (two years), a significant number of class members should be excluded based on “when” they used the technology. Plaintiffs do not propose an objective or common method for evaluating whether a class member used the technology while Cerence’s cloud was connected. As explained above, even if a claimant owned a vehicle during the relevant period, that doesn’t mean he used the MBUX technology in Illinois, while giving a command that would have gone to the Cerence cloud, *during that period*. Plaintiffs’ class action notice expert offered no way “how to determine if someone meets the timing requirements to be a class member.” Ex. 12, Peak Dep. Tr. 102:10-102:19. And there is no objective way to do so.

All four of the above issues (who, what, when, and where) reveal independent flaws in the class definition proposed by Plaintiffs. They make clear that Plaintiffs cannot, as they claim, obtain a “complete putative Class list.” *See* Mot. 8. They preclude class certification.

2. The absence of an objective method for determining class members leads to a class that would rely entirely on claimants’ “because I say so” submissions.

Because there is no class list, and Plaintiffs lack an objective method for defining who used the technology, the best Plaintiffs can propose is as follows: (1) notify owners and lessors of the vehicles; and (2) supplement that with publication notice. Because neither of these methods will determine who actually used the technology, a claims process in which claimants submit affidavits that they used the technology will be needed to figure out who actually did. *See* Mot. at 11-12. One glaring problem with this method is that *anyone* could submit an affidavit claiming to have used the technology, whether as a driver or passenger, and Cerence would have no way to challenge such a claim beyond attacking a witness’s credibility. Plaintiffs’ expert offered no way to resolve this issue at her deposition. She has “[n]ever been involved in ...a method to check whether the claimants are [filing claims] truthfully,” and did not know if she could even test that.

Ex. 12, Peak Dep. Tr. 98:1-20. Inaccurate affidavits are not unlikely, as is demonstrated by Allan's claim. He sued Cerence and has pursued his case for nearly three years even though he didn't use the technology in a time period where Cerence received MBUX speech data in its cloud. *See* Motion for Summary Judgment, also filed today. Plaintiffs propose no method for testing the accuracy of claim-form affidavits, especially given the complexity of the fact issues in this case, *see* Section I.A.1 *supra*.

Moreover, and importantly, the affidavits would not merely clean up individual questions left over after a predominant common question is decided; they would be needed to acquire individual proof for the same questions. Plaintiffs argue that this can be resolved through common proof. *Dancel* illuminates the problem with Plaintiffs' approach. There, the plaintiff sought to certify a class of Instagram users on the theory that Instagram usernames identified individuals to an "ordinary, reasonable viewer." *Dancel*, 949 F.3d at 1009. The Seventh Circuit held that class certification would not be appropriate because the supposed common questions could only be answered with "individual proof" relating to each user's experience. *Id.* The same analysis applies here.

3. A class action is not superior or a fair method of adjudication because potential damages are disproportionate to Plaintiffs' alleged harm.

A class action is not a superior method of adjudicating a controversy when the potential damages are disproportionate to the actual harm alleged. *In re Trans Union Corp. Privacy Litig.*, 211 F.R.D. 328, 350–51 (N.D. Ill. 2002) (denying certification). "Although certification should not be denied solely because of the possible financial impact it would have on a defendant, consideration of the financial impact is proper when based on the disproportionality of a damage award that has little relation to the harm actually suffered by the class, and on the due process concerns attended upon such an impact." *Id.* at 351.

Here, Plaintiffs do not allege any physical or financial harm beyond a violation of the statute. Nor do they allege that any entity or person has actually misused their biometric data. Despite this lack of injury, BIPA allows for damages of \$1,000 or \$5,000 *per violation*. 740 ILCS 14/20. That means plaintiffs can bring individual BIPA cases seeking statutory damages for every use of a biometric technology (the “per-scan” theory of liability) – and they do. *E.g., Schwartz v. Supply Network, Inc.*, 2024 WL 4871408, at *4-5 (N.D. Ill. Nov. 22, 2024).

Plaintiffs’ counsel has indicated that they will argue per-scan damages can apply in this class action. *See* Ex. 16, Aug. 6, 2024 Hr’g Tr. 3:17-19 (Plaintiffs’ counsel reporting to the Court that “the parties will probably litigate whether the amendment [to the statute eliminating per-scan damages] applies retroactively”). Plaintiffs also predict “tens of thousands” of class members and rely on a [REDACTED]

[REDACTED]⁶ *See* Mot. at 6-7. Crediting Plaintiffs’ theory, assuming 40,000 class members, each of whom used cloud-enabled technology 100 times, times \$1,000 per violation, that would lead to damages of \$4 billion – all for simple procedural violations of the statute.

In reply, we expect that Plaintiffs will say that BIPA damages are discretionary. *See Cothron v. White Castle System, Inc.*, 216 N.E.3d 918, 929 (Ill. 2023). That’s true, but it is no answer. The *in terrorem* effect of \$4 billion in BIPA damages is real. It implicates due process concerns and demonstrates that a class action would not be a superior method to adjudicate individuals’ claims. *See, e.g., TransUnion*, 211 F.R.D. at 350-51 (denying certification because class action was not superior method where it “could result in statutory minimum damages ...

⁶ As discussed in Sections I.A.i and I.A.ii, this report does not provide a method for actually identifying class members because it addresses only vehicles (not people who used cloud-enabled speech technology in them). This number is only referenced in this section for calculating the scope of potential damages Plaintiffs will seek in a class action.

grossly disproportionate to any actual damage”). Also considering the feasibility of individual suits and the numerous factual issues with the named plaintiffs here, *see* Section II, *infra*, individual suits are a superior method of adjudicating these novel BIPA claims.

B. Common questions do not predominate over individual issues.

Class certification should be denied for the additional reason that common issues do not predominate over individualized issues. The criteria for satisfying “predominance” under Rule 23(b)(3) is related to the “commonality” requirement, but more demanding. *Van*, 332 F.R.D. at 288, quoting *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 624 (1997).

The question is not just whether there are *more* common questions; it is whether the “common questions represent a significant aspect of [a] case and . . . can be resolved for all members of [a] class in a single adjudication.” *Messner*, 669 F.3d at 814. If an issue must be proven through “evidence that varies from member to member...then it is an individual question.” *Id.*; *Dancel*, 949 F.3d at 1007 (explaining that such questions cannot “be saved for after certification”); *see also Smith-Brown v. Ulta Beauty, Inc.*, 335 F.R.D. 521, 532-33 (N.D. Ill. 2020) (applying *Dancel*). When “individualized inquiries predominate,” the “appropriate step” is “[d]ecertification, not redefinition.” *See Johnson v. Yahoo! Inc.*, 2018 WL 835339, at *4 (N.D. Ill. Feb. 13, 2018) (denying certification because individualized inquiries regarding consent overwhelmed common questions).

Like in *Dancel* and its progeny, Plaintiffs’ theory of the case is overwhelmed by dispositive, individual issues. They propose a handful of common questions that amount to legal conclusions relating to whether Cerence violated BIPA. Mot. at 14-15. As shown next, that’s not good enough.

1. Individualized inquiries are required to determine if class members used the technology and if their data was ever sent to Cerence from Illinois during the relevant time period.

To state the obvious, Plaintiffs need to prove that each class member actually used, in Illinois, the technology they allege violated BIPA. They also need to prove that each person used the technology when it was connected to Cerence's cloud. 740 ILCS 14/15(b) (governing entities that "collect" biometric data), (d) (governing entities "in possession" of biometric data).

There is no common evidence to establish whether an individual used the technology. To make that finding, the factfinder will need to determine if each person created a Mercedes Me Connect account, and if so, then will need to determine if he paired the Mercedes Me Connect account to his vehicle. From there, the factfinder will need to conduct user-by-user inquiries to determine who used the technology, what they said, when they said it, and where they said it. *See* Section I.A.1, *supra*. The issue was similar in *Dancel*, where the Seventh Circuit affirmed the denial of certification of a class of social media users because "evidence that varie[d] from member to member" would have been required to identify the proposed class members. 949 F.3d at 1004, 1007, 1010 (quoting *Bouaphakeo*, 136 S. Ct. at 1045, and *Messner*, 669 F.3d at 815).

2. Individualized inquiries are required to determine if class members consented under BIPA 15(b) and (d).

Additionally, to prove their BIPA 15(b) and (d) claims, Plaintiffs will need to prove that each class member did not consent to the collection or dissemination of their data. 740 ILCS 15(b); (d). The need for individualized determinations on this element is evident from the Plaintiffs' own, independent productions of the same document demonstrating [REDACTED]

[REDACTED]. *See* Ex. 17, FRESHOUR_000011 ([REDACTED]); Ex. 18, ALLAN_000049 at [REDACTED]

ALLAN_000050 (same); Ex. 19, Singh Report ¶¶ 3, 67. That document provides that [REDACTED]
[REDACTED]
[REDACTED] E.g., Ex. 18, ALLAN_000049 at ALLAN_000050. To determine if Cerence violated the consent provisions in BIPA 15(b) and (d), the factfinder will need to determine if each class member received, consented to, and/or withdrew consent from the [REDACTED] or any similar document. The consent defense requires examination of each class member's conduct and documents. It cannot be resolved on a class-wide basis.

3. Individualized inquiries are required to determine whether each class member waived BIPA rights.

Plaintiffs will also need to prove that each class member did not waive their rights to seek relief from Cerence under BIPA. Statutory rights are waived expressly or impliedly (through behavior) when the waiver is "knowing, voluntary, and intentional." *In re Estate of Ferguson*, 313 Ill. App. 3d 931, 937 (2d Dist. 2000); *Lake County Grading Co. of Libertyville, Inc. v. Advance Mechanical Contractors, Inc.*, 275 Ill. App. 3d 452, 462 (2d Dist. 1995). Courts must consider potential defenses in determining whether predominance is satisfied at the class certification stage. *See Wooley v. Jackson Hewitt, Inc.*, 2011 WL 1559330, at *11 (N.D. Ill. Apr. 25, 2011).

Freshour waived his BIPA rights by continuing to use and pay for the Mercedes Me Connect services, including Cerence's ASR technology, long after filing this lawsuit. Ex. 6, Freshour Dep. Tr. 29:13-15, 32:21-22 ("constantly" uses MBUX Voice Assistant and pays \$150 per year to continue to use it). Determining whether each class member similarly waived their rights will require a person-by-person analysis about whether each user similarly continued to use the technology after being put on notice, including what they learned during enrollment, materials they received from Mercedes-Benz, and this lawsuit. Courts in this district refuse to certify classes

for failure to meet the “predominance” requirement where the named plaintiff was subject to an affirmative defense of waiver after having testified that he continued to purchase or use the product after learning about the alleged wrongdoing. *See, e.g., Al Haj v. Pfizer Inc.*, No. 17 C 6730, 2020 WL 1330367, at *3 (N.D. Ill. Mar. 23, 2020); *Lipton v. Chattem, Inc.*, 289 F.R.D. 456, 459-60 (N.D. Ill 2013); *Langendorf*, 306 F.R.D. at 581-84.

Recognizing the importance of this defense, Plaintiffs attempt to distract the Court from the individualized inquiries by arguing that Cerence “cannot make” this argument based on an unrelated state court ruling on the pleadings. Mot. at 15-16. No such order was entered in this case.

4. Individualized inquiries are required to prove and calculate damages.

After identifying which class members used and paired the technology, Plaintiffs will need to prove the number of times each class member used the technology in their damages analysis. Individualized inquiries will be necessary in the discretionary damages analysis. Analysis of individualized questions regarding damages is an essential step of the “rigorous analysis” required by Rule 23. *Eddlemon v. Bradley Univ.*, 65 F.4th 335, 340 (7th Cir. 2023) (vacating certification where district court failed to consider individualized questions regarding damages).

This is not the type of case where all class members had a common experience or engaged with the technology under similar circumstances. *See, e.g.,* Section I.A.1, *supra* (explaining why individualized inquiries are needed to determine, who, what, when, and where the technology was used). Additionally, some class members could have used MBUX speech-recognition software many times, only a few times, or not at all. *Compare* Ex. 10, Allan Dep. Tr. 40:11-20 (stopped using MBUX Voice Assistant completely) *with* Ex. 6, Freshour Dep. Tr. 29:13-15 (“constantly” uses MBUX Voice Assistant, even after suing Cerence). These varying circumstances and frequency not only give rise to user-by-user affirmative defenses, *see, supra*, at Section I.B, but also demand user-by-user proof and damages calculations. *See Andrews*, 545 F.3d at 577 (“If the

class certification only serves to give rise to hundreds or thousands of individual proceedings requiring individually tailored remedies, it is hard to see how common issues predominate or how a class action would be the superior means to adjudicate the claims.”).

* * *

In sum, Plaintiffs propose only a handful of superficial common questions aimed at asking whether Cerence violated BIPA Sections 15(b) and (d). Mot. at 14-15. But resolution of those common questions is only possible by also resolving an abundance of dispositive, individualized issues. *See Dancel*, 949 F.3d at 1007, 1010 (affirming denial of certification where foundational question could only be proven through “evidence that varie[d] from member to member”).

II. Plaintiffs also Fail to Meet Their Burden on Adequacy and Typicality.

Adequacy and typicality are lacking where the named plaintiffs’ “claims . . . are significantly weaker” than other class members’ claims due to being “subject to a defense that would not defeat [the claims of] unnamed class members.” *Randall v. Rolls-Royce Corp.*, 637 F.3d 818, 824 (7th Cir. 2011) (affirming denial of certification because named plaintiffs’ claims were weaker than other class members’ claims); *see also Greene v. Mizuho Bank, Ltd.*, 327 F.R.D. 190, 198 (N.D. Ill. 2018) (denying certification because plaintiff was subject to individualized and unique defense). As explained below, Plaintiffs fail to satisfy the adequacy and typicality requirements of Rule 23(a).

1. Allan is not a member of the defined class because his data was never transmitted to Cerence.

Allan cannot be class representative because he is not even a member of his own proposed class. The class definition expressly excludes “all individuals whose entire period of ownership, lease, or use [REDACTED]

[REDACTED] Mot. at 9 (emphasis added). As

discussed in the accompanying Motion for Summary Judgment also filed today, it is undisputed that Allan *only* used the MBUX speech software during the period that [REDACTED]. Compare Ex. 10, Allan Dep. Tr. 36:18-19, 39:19-40:20 (used technology from November 2019 through early 2023); with Ex. 5, Tsuboyama Dec. ¶¶ 8, 10 ([REDACTED]). Plaintiffs' proposed exclusion makes sense because the proposed class seeks relief for alleged harm flowing from [REDACTED]. But it precludes Allan from being a class representative (let alone an "adequate" one) because "a named plaintiff must be a member of the putative class" he claims to represent. *See Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1027 (7th Cir. 2018).

2. Plaintiffs are subject to unique defenses.

Typicality also requires that the "claims or defenses of the representatives" be "typical of the claims or defenses of the class." FED. R. CIV. P. 23(a)(3). The "presence of even an arguable defense peculiar to the named plaintiff or a small subset of the plaintiff class may destroy" typicality "as well as bring into question the adequacy of the named plaintiff's representation." *CE Design*, 637 F.3d at 726 (vacating certification based on potential consent defense). The defense need not be a "slam dunk" to defeat adequacy; "it need only be arguable." *Sherwin v. Samsung Elecs. Am., Inc.*, No. 16 C 7535, 2019 WL 10854535, at *2 (N.D. Ill. 2019) (denying class certification based on arguable statute of limitations defense).

As an initial matter, even if there were a dispute as to whether Allan's use fell outside of the [REDACTED]—which there isn't—Allan would still need to dedicate significant time and effort "to [his] own problems" at trial, making this case unsuitable for class treatment. *See Koos v. First Nat'l Bank of Peoria*, 496 F. 2d 1162, 1164-65 (7th Cir. 1974). That alone makes him an inadequate class representative.

Additionally, Freshour is subject to a waiver defense and both Plaintiffs are subject to a consent defense. *See* Sections 1.B.2 and 1.B.3, *supra*. These substantial and unique defenses make them atypical and inadequate class representatives.

3. Freshour cannot be the class representative because he is not interested in fulfilling his duties.

Freshour is not an adequate class representative because he failed to monitor the case and class counsel. Rule 23(a)(4) requires that the “representative parties will fairly and adequately protect the interests of the class.” FED. R. CIV. P. 23(a)(4). While class actions are primarily managed by class counsel, “[t]he named plaintiffs are representatives of the class—fiduciaries of its members—and therefore are charged with monitoring the lawyers who prosecute the case on behalf of the class.” *Eubank v. Pella Corp.*, 753 F.3d 718, 719 (7th Cir. 2014). Accordingly, an “adequate class representative must have an understanding of the basic facts underlying the claims, some general knowledge of the case, and a willingness and ability to participate in discovery.” *Pruitt v. Pers. Staffing Grp., LLC*, No. 16-cv-5079, 2020 WL 3050330, at *4 (N.D. Ill. June 8, 2020). As Judge Pacold recently observed in denying class certification in a BIPA case, “a class representative cannot simply shift its duties to class counsel.” ECF No. 197, *Duron v. Unifocus*, No. 18-cv-6479 (N.D. Ill. Dec. 10, 2024) (transcript of telephonic proceedings) at 23. *See also Physicians Healthsource, Inc. v. Allscripts Health Sols., Inc.*, 254 F. Supp. 3d 1007, 1023 (N.D. Ill. 2017) (“Figurehead plaintiffs are not permitted.”).

Freshour has demonstrated that he has no interest in fulfilling his duty to unnamed class members. During his deposition, he could not articulate any basis for his Section 15(d) and 15(c) BIPA claims, he testified that he did not know why the Complaint had been amended *three* times, and he admitted that he did not know about the related state court action – in which he is also a named Plaintiff – *at all*. Ex. 6, Freshour Dep. Tr. 42:22-43:10, 51:7-10-52:4. He didn’t know

whether his case was “based on the allegation that Cerence is collecting your voiceprint when you say ‘Hey Mercedes.’” *Id.* 31:7-11. He also readily admitted that he is not “monitoring the case or following it in any way.” *Id.* 56:7-10.

Making matters worse, Freshour doesn’t know how class counsel is paid and he doesn’t “find it to be any of [his] business” *how* they get paid. Ex. 6, Freshour Dep. Tr. 56:17-22. The duty to monitor includes ensuring “that class counsel does not take an excessive fee award at the expense of the class’s monetary award.” *Murray v. E-Trade Fin. Corp.*, 240 F.R.D. 392, 399 (N.D. Ill. 2006); *see also, e.g., Eubank*, 753 F.3d at 723-24 (discussing the “grave” problems associated with a class representative who does not or will not monitor class counsel). If the class representative does not know what the lawyers are doing, or how they propose to be paid, he cannot fulfill his duties under Rule 23(a)(4).

The reasons for Freshour’s lack of engagement are clear. He doesn’t really want to be a class representative. He testified at his deposition that he was “not sure” he liked being a class representative and that he was “thrust into the situation” by attorneys. Ex. 6, Freshour Dep. Tr. 54:12-24; 52:15-53:6. But a “class representative cannot simply shift its duties to class counsel.” *Physicians Healthsource, Inc.*, 254 F. Supp. 3d at 1023.

CONCLUSION

The Court should deny Plaintiffs’ Motion for Class Certification in its entirety.

Dated: December 10, 2025

Respectfully submitted,

CERENCE INC.

By: /s/Mehgan E.H. Keeley
One of Its Attorneys

Matthew C. Wolfe
Amy Y. Cho
Mehgan E. H. Keeley
Samuel G. Bernstein
Elise N. Malin
SHOOK, HARDY & BACON LLP
111 South Wacker Drive, Suite 4700
Chicago, IL 60606
Tel: (312) 704-7700
mwolfe@shb.com
acho@shb.com
mkeeley@shb.com
sbernstein@shb.com
emalin@shb.com

EXHIBIT 1

Randolph Freshour, et al. v. Cerence Inc.

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RANDOLPH FRESHOUR and VINCENZO
ALLAN, each individually and on
behalf of similarly situated
individuals,

Plaintiffs,

v.

CERENCE INC., a Delaware
corporation,

Defendant.

No. 1:23-cv-02667

DEPOSITION OF: STEFAN HAMERICH, PhD

TAKEN BY: PLAINTIFFS

DATE: July 15, 2025
Commencing at 10:12 a.m.

PLACE: SHOOK, HARDY & BACON L.L.P.
1 Federal Street, Suite 2620
Boston, Massachusetts 02110

REPORTED BY: ELIZABETH MCAVOY
Notary Public
Commonwealth of Massachusetts

Category	Percentage
1	100%
2	95%
3	90%
4	15%
5	85%
6	100%
7	100%
8	98%
9	95%
10	90%
11	95%
12	100%
13	85%
14	100%
15	100%
16	100%
17	100%
18	100%
19	100%
20	100%
21	100%
22	100%
23	100%
24	100%
25	100%
26	100%
27	100%
28	100%
29	100%
30	100%
31	100%
32	100%
33	100%
34	100%
35	100%
36	100%
37	100%
38	100%
39	100%
40	100%
41	100%
42	100%
43	100%
44	100%
45	100%
46	100%
47	100%
48	100%
49	100%
50	100%
51	100%
52	100%
53	100%
54	100%
55	100%
56	100%
57	100%
58	100%
59	100%
60	100%
61	100%
62	100%
63	100%
64	100%
65	100%
66	100%
67	100%
68	100%
69	100%
70	100%
71	100%
72	100%
73	100%
74	100%
75	100%
76	100%
77	100%
78	100%
79	100%
80	100%
81	100%
82	100%
83	100%
84	100%
85	100%
86	100%
87	100%
88	100%
89	100%
90	100%
91	100%
92	100%
93	100%
94	100%
95	100%
96	100%
97	100%
98	100%
99	100%
100	100%

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

MR. GERBIE: Okay. We've been going for about an hour. Why don't we take a quick ten-minute break? I think it's about eleven oh -- why don't we say 11:15 your time?

MS. KEELEY: Okay.

THE DEPONENT: Yeah.

MR. GERBIE: Off the record.

THE REPORTER: So with that we are now off the record for a quick break. The time is 11:03 a.m. and we are off the record.

[OFF THE RECORD]

[ON THE RECORD]

THE REPORTER: We're now back on record. The time is 11:20 a.m. You may now proceed.

[REDACTED]

[illegible][illegible]

Randolph Freshour, et al. v. Cerence Inc.

Page 50

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 52

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

[REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 53

1 A Yeah.
 2 Q What car is it specifically?
 3 A It's a BMW 5 Series.
 4 Q Which one?
 5 A A touring, 530i.
 6 Q Does that car have any Nuance or Cerence
 7 technology in it?
 8 A Of course, yes.
 9 Q Do you use the various voice technology in the
 10 car?
 11 A Yes.
 12 Q Do you use the voice biometry tool?
 13 A There is none within BMW.
 14 Q Okay. So which ones do you use?
 15 A I use the ASR. I use the SSE, ASR dialogue, NLU,
 16 TTS. I use them all.
 17 Q Do you like them?
 18 A Yeah. I mean, the car is getting old, so -- but
 19 yeah, technically, still, I like it, yes.
 20 Q What year is the car?
 21 A 2019 I believe, something like that, yeah.
 22 Q Do you know if the car still receives over-air
 23 updates for the infotainment system?
 24 MR. WOLFE: Object to the form.
 25 THE DEPONENT: I don't know anyways, so.

[illegible]

Response	Percentage
Yes, the current government is responsible	100%
No, the current government is not responsible	0%

[illegible][illegible]

1

[illegible]

Category	Percentage
1	100%
2	95%
3	85%
4	80%
5	90%
6	95%
7	95%
8	90%
9	85%
10	100%
11	95%
12	45%
13	85%
14	40%
15	75%
16	90%
17	95%
18	85%
19	90%
20	85%
21	95%
22	70%

[illegible]

Randolph Freshour, et al. v. Cerence Inc.

Page 118

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 120

1 THE REPORTER: All right. We were just off the
 2 record. The time is 2:14. Sorry.
 3 [OFF THE RECORD]
 4 [ON THE RECORD]
 5 THE REPORTER: Now back on the record. The time
 6 is 2:32 p.m.
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 119

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Q Okay.

MR. GERBIE: Okay, why don't we take a quick
 ten-minute break off the record? Back at 2:25.

MR. WOLFE: How much longer do you think you
 have, David?

MR. GERBIE: I probably got at least --

[OFF THE RECORD]

[ON THE RECORD]

Page 121

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

31 (Pages 118 to 121)

EXHIBIT 2

Randolph Freshour, et al. v. Cerence Inc.

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RANDOLPH FRESHOUR and VINCENZO
ALLAN, each individually and on
behalf of similarly situated
individuals,

Plaintiffs,

v.

CERENCE INC., a Delaware
corporation,

Defendant.

No. 1:23-cv-02667

DEPOSITION OF: MICHAEL TROPP

TAKEN BY: PLAINTIFFS

DATE: July 17, 2025
Commencing at 10:25 a.m.

PLACE: SHOOK, HARDY & BACON L.L.P
1 Federal Street, Suite 2620
Boston, Massachusetts 02110

REPORTED BY: Elizabeth McAvoy
Notary Public
Commonwealth of Massachusetts

1

1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

7. [REDACTED]

8. [REDACTED]

9. [REDACTED]

10. [REDACTED]

11. [REDACTED]

12. [REDACTED]

13. [REDACTED]

14. [REDACTED]

15. [REDACTED]

16. [REDACTED]

17. [REDACTED]

18. [REDACTED]

19. [REDACTED]

20. [REDACTED]

21. [REDACTED]

22. [REDACTED]

23. [REDACTED]

24. [REDACTED]

25. [REDACTED]

26. [REDACTED]

27. [REDACTED]

28. [REDACTED]

29. [REDACTED]

30. [REDACTED]

31. [REDACTED]

32. [REDACTED]

33. [REDACTED]

34. [REDACTED]

35. [REDACTED]

36. [REDACTED]

37. [REDACTED]

38. [REDACTED]

39. [REDACTED]

40. [REDACTED]

41. [REDACTED]

42. [REDACTED]

43. [REDACTED]

44. [REDACTED]

45. [REDACTED]

46. [REDACTED]

47. [REDACTED]

48. [REDACTED]

49. [REDACTED]

50. [REDACTED]

51. [REDACTED]

52. [REDACTED]

53. [REDACTED]

54. [REDACTED]

55. [REDACTED]

56. [REDACTED]

57. [REDACTED]

58. [REDACTED]

59. [REDACTED]

60. [REDACTED]

61. [REDACTED]

62. [REDACTED]

63. [REDACTED]

64. [REDACTED]

65. [REDACTED]

66. [REDACTED]

67. [REDACTED]

68. [REDACTED]

69. [REDACTED]

70. [REDACTED]

71. [REDACTED]

72. [REDACTED]

73. [REDACTED]

74. [REDACTED]

75. [REDACTED]

76. [REDACTED]

77. [REDACTED]

78. [REDACTED]

79. [REDACTED]

80. [REDACTED]

81. [REDACTED]

82. [REDACTED]

83. [REDACTED]

84. [REDACTED]

85. [REDACTED]

86. [REDACTED]

87. [REDACTED]

88. [REDACTED]

89. [REDACTED]

90. [REDACTED]

91. [REDACTED]

92. [REDACTED]

93. [REDACTED]

94. [REDACTED]

95. [REDACTED]

96. [REDACTED]

97. [REDACTED]

98. [REDACTED]

99. [REDACTED]

100. [REDACTED]

[illegible][illegible]

Label	Value (approximate length)
1	10
2	15
3	20
4	18
5	22
6	20
7	25
8	12
9	8
10	20
11	25
12	30
13	28
14	25
15	20
16	15
17	10
18	5
19	25
20	28

Randolph Freshour, et al. v. Cerence Inc.

Page 42

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 MS. KEELEY: Paul, we've been going for a little
 25 over an hour. Are we close to a good breaking point?

Page 44

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 MR. GESKE: Okay, now we can take a break.
 12 THE REPORTER: Okay. So with that, we are taking
 13 a quick break. The time is 11:44 a.m. and we are now off
 14 the record.
 15 [OFF THE RECORD]
 16 [ON THE RECORD]
 17 THE REPORTER: All right, so with that, we are
 18 back on record. The time is 12:03 p.m. and you may now
 19 proceed.
 20 MR. GESKE: Thank you.
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 43

1 MR. GESKE: Can we go for, like, another ten
 2 minutes?
 3 MS. KEELEY: Yeah. Is that good with you?
 4 THE DEPONENT: Fine.
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

[REDACTED]
 1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

12 (Pages 42 to 45)

Page 92

1

1

July 17, 2025

Randolph Freshour, et al. v. Cerence Inc.

Page 118

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 120

1 well. I have maybe three or four more exhibits to go
 2 through.
 3 MS. KEELEY: Okay, let's take a break then.
 4 MR. GESKE: Okay.
 5 MS. KEELEY: So do you -- what's the -- or sorry.
 6 You go ahead. You need to --
 7 THE REPORTER: Yeah. We can go off record for a
 8 quick break. The time is 4:01 p.m. and we are off the
 9 record.
 10 [OFF THE RECORD]
 11 [ON THE RECORD]
 12 THE REPORTER: All right, so we're back on the
 13 record. The time is 4:24 p.m. You may proceed.
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 119

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 MS. KEELEY: Paul, we've been going for about an
 24 hour and a half. Are we at a good breaking point?
 25 MR. GESKE: Yes. I'm just looking at the time as

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

31 (Pages 118 to 121)

1

36 (Pages 138 to 141)

EXHIBIT 3
CONFIDENTIAL
FILED UNDER SEAL

EXHIBIT 4

CONFIDENTIAL

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RANDOLPH FRESHOUR and) No. 1:23-cv-02667
VINCENZO ALLAN, each)
individually and on behalf)
of similarly situated)
individuals,)
Plaintiffs,)
v.)
CERENCE INC., a Delaware)
corporation,)
Defendant.)
_____)

*** CONFIDENTIAL ***

VIDEOTAPED DEPOSITION OF CHRISTOPHER ROBERT BARTON
30(b)(6) MERCEDES BENZ USA, LLC
Phoenix, Arizona
September 18, 2025
10:16 a.m.

REPORTED BY:
Kate E. Roundy, RPR
Arizona Certified Reporter
Certificate No. 50582

CONFIDENTIAL

<p style="text-align: right;">Page 42</p> <p>1 available?</p> <p>2 MR. MYERSON: Objection. Beyond the scope.</p> <p>3 You can answer, if you know.</p> <p>4 THE WITNESS: I -- I -- I couldn't give you an</p> <p>5 accurate date. I'm not sure.</p> <p>6 BY MR. GESKE:</p> <p>7 Q. Has it been around at least as far as back as</p> <p>8 2019?</p> <p>9 A. Now, Mercedes changes the names of their</p> <p>10 different systems, but a system similar to the MMC may</p> <p>11 have been called something different, may have been a</p> <p>12 different acronym. As far as I know was around in 2019.</p> <p>13 Q. So it may have been a different name, but it</p> <p>14 performed the same function?</p> <p>15 A. The -- Yes. The connecting your vehicle to an</p> <p>16 app function, I believe was around in 2019.</p> <p>17 (Exhibit 2 was marked for identification.)</p> <p>18 MR. GESKE: This will be Exhibit 2.</p> <p>19 For the folks on Zoom, this is MBUSA_0077.</p> <p>20 BY MR. GESKE:</p> <p>21 Q. Mr. Barton, I believe this is the list that you</p> <p>22 were talking about earlier that you reviewed as part of</p> <p>23 your preparation; is that correct?</p> <p>24 A. Yes, sir. It looks like the one that I was</p> <p>25 reviewing.</p>	<p style="text-align: right;">Page 44</p> <p>1 where you talk to the car.</p> <p>2 Q. And when you said the team pulled the data of the</p> <p>3 of vehicles sold in Illinois, which team are you referring</p> <p>4 to?</p> <p>5 A. I -- I believe it was requested by Brittany, and</p> <p>6 then the sales team, Neil, is the one that pulled the</p> <p>7 reports -- or this report.</p> <p>8 Q. So did -- did MBUSA need to involve any third</p> <p>9 parties in getting this data or compiling this list or was</p> <p>10 it able to do it with its own records?</p> <p>11 A. This list with its own records.</p> <p>12 (Exhibit 3 was marked for identification.)</p> <p>13 MR. GESKE: This is Exhibit 3. We're going to</p> <p>14 look at this together with the list that we have in front</p> <p>15 of us.</p> <p>16 THE WITNESS: Okay.</p> <p>17 MR. GESKE: For folks on Zoom, this is</p> <p>18 February 14th, 2025, letter.</p> <p>19 BY MR. GESKE:</p> <p>20 Q. You don't have to read this whole thing. We're</p> <p>21 mainly just going to be looking at the third page. And,</p> <p>22 specifically, the bottom of the third page.</p> <p>23 Have you seen this letter before?</p> <p>24 A. I believe so, yes.</p> <p>25 Q. When did you first see this letter?</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Now, I think -- I think you said that the one you</p> <p>2 looked at was several pages long.</p> <p>3 Were you looking at a longer version of this?</p> <p>4 A. This appears to be same. I believe we could</p> <p>5 check, but I believe I said it was two to four pages.</p> <p>6 This falls within that range.</p> <p>7 Q. Did you first see this as part of your</p> <p>8 preparation or had you seen it before that?</p> <p>9 A. No. It was part of the preparation.</p> <p>10 [REDACTED]</p> <p>22 Q. I believe in your answer you mentioned Cerence</p> <p>23 technology.</p> <p>24 What did -- what did you mean by that?</p> <p>25 A. The "Hey, Mercedes" function, the voice function</p>	<p style="text-align: right;">Page 45</p> <p>1 A. It would have been last week or the week before,</p> <p>2 when I got the other documents.</p> <p>3 Q. So I'll represent to you that this is a letter</p> <p>4 that was sent to me by MBUSA's lawyers.</p> <p>5 A. Okay.</p> <p>6 Q. And in this bottom of page 3, there's a paragraph</p> <p>7 here talking about this list that we've been looking at.</p> <p>8 A. Okay.</p> <p>9 Q. And if we look at the -- starting with the second</p> <p>10 sentence in that bottom paragraph.</p> <p>11 It says, Subject to and without waiving the</p> <p>12 foregoing objections, MBUSA pulled sales data related to</p> <p>13 vehicles that are capable of providing the, quote, "Hey,</p> <p>14 Mercedes," end quote, feature also referred to as MBUX</p> <p>15 Voice Assistant, which incorporates Cerence, Inc.'s,</p> <p>16 technology (f/k/a Nuance Communications.)</p> <p>17 In the United States the MBUX Voice Assistant was</p> <p>18 first launched in 2019 in the NTG6 platform in the A Class</p> <p>19 only. In the following years, the MBUX Voice Assistant</p> <p>20 was incorporated into other models with the NTG7.0 and</p> <p>21 Gen 20x head units. The MBUX Voice Assistant is standard</p> <p>22 on any model with the above-referenced head units for the</p> <p>23 vehicle's lifetime and does not require renewal. The</p> <p>24 default is for the feature to be, quote, "on" but the</p> <p>25 feature can be turned off in the head unit and app setting</p>

12 (Pages 42 - 45)

CONFIDENTIAL

<p style="text-align: right;">Page 46</p> <p>1 by the customer -- or, I'm sorry, by the consumer.</p> <p>2 Did I read that correctly?</p> <p>3 A. Sounded -- sounded good to me.</p> <p>4 Q. So these -- if I'm understanding this correctly,</p> <p>5 it's saying that the -- a Mercedes feature is the feature</p> <p>6 that incorporates the Cerence technology that you talked</p> <p>7 about earlier; right?</p> <p>8 A. As far as I understand it, yes, sir.</p> <p>9 Q. And so that feature is present in vehicles that</p> <p>10 have either the NTG6, NTG7 or Gen 20x platforms; correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And so we have this list here of specific models</p> <p>13 and years that have one of those platforms; correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. So MBUSA is able to determine based on the</p> <p>16 vehicle's year and model what type of platform it has and</p> <p>17 whether it's -- it has Cerence technology; correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And it used that -- those criteria in creating</p> <p>20 this list?</p> <p>21 A. Yes, sir.</p> <p>22 Q. So this letter also said by default the "Hey,</p> <p>23 Mercedes" feature is on; correct?</p> <p>24 A. That's what it says. Yes, sir.</p> <p>25 Q. So does that mean it's -- the "Hey, Mercedes"</p>	<p style="text-align: right;">Page 48</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
<p style="text-align: right;">Page 47</p> <p>1 feature, the voice assistant is not a -- it's not an</p> <p>2 option that a consumer needs to pay extra for. On all</p> <p>3 these vehicles, it's standard on these vehicles?</p> <p>4 A. Yes, sir.</p> <p>5 Q. When the letter says that the list was based on</p> <p>6 sales data showing vehicles sold in Illinois, do you know</p> <p>7 if it's referring to vehicles that were allocated to</p> <p>8 Illinois dealerships or are these vehicles that were</p> <p>9 actually sold to consumers in Illinois?</p> <p>10 A. The information that was searched through to find</p> <p>11 this list, the data gets entered by the dealerships when</p> <p>12 the sale is complete.</p> <p>13 So sale's complete, goes into the system, and the</p> <p>14 database, and that's what was searched.</p> <p>15 So it was new car sales in the state of Illinois.</p> <p>16 Q. So just new car sales.</p> <p>17 It didn't include used car sales?</p> <p>18 A. That is correct.</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">Page 49</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

EXHIBIT 5
CONFIDENTIAL
FILED UNDER SEAL

EXHIBIT 6

**RANDOLPH FRESHOUR
A.P. vs CERENCE INC.**

June 18, 2025

1-4

Page 1	Page 3
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF ILLINOIS</p> <p>3 EASTERN DIVISION</p> <p>4 A.P., a minor, by and through</p> <p>5 her guardian, CARLOS PENA, CARLOS</p> <p>6 PENA, RANDOLPH FRESHOUR, and</p> <p>7 VINCENZO ALLAN, each individually</p> <p>8 and on behalf of similarly situated</p> <p>9 individuals,</p> <p>10 Plaintiffs, Case No.</p> <p>11 vs. 1:23-cv-02667</p> <p>12 CERENCE INC., a Delaware</p> <p>13 corporation,</p> <p>14 Defendant.</p> <p>15 _____/</p> <p>16</p> <p>17 VIDEOTAPED DEPOSITION OF RANDOLPH FRESHOUR</p> <p>18 CHICAGO, ILLINOIS</p> <p>19 WEDNESDAY, JUNE 18TH, 2025</p> <p>20</p> <p>21</p> <p>22 REPORTED BY:</p> <p>23 DEBORAH HABIAN, RMR, CRR, CLR</p> <p>24 JOB NO. J13023175</p>	<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PLAINTIFFS</p> <p>3 McGUIRE LAW, PC</p> <p>4 BY: PAUL T. GESKE, ESQ.</p> <p>5 COLIN PRIMO BUSCARINI, ESQ.</p> <p>6 55 West Wacker Drive, 9th Floor</p> <p>7 Chicago, Illinois 60601</p> <p>8 (312) 893-7002</p> <p>9 pgeske@mcgpc.com</p> <p>10 cbuscarini@mcgpc.com</p> <p>11</p> <p>12 ON BEHALF OF THE DEFENDANT</p> <p>13 SHOOK HARDY & BACON LLP</p> <p>14 BY: MATTHEW C. WOLFE, ESQ.</p> <p>15 MEAGHAN KEELEY, ESQ.</p> <p>16 111 South Wacker Drive, Suite 4700</p> <p>17 Chicago, Illinois 60606</p> <p>18 (312) 704-7700</p> <p>19 mwolfe@shb.com</p> <p>20 mkeeley@shb.com</p> <p>21</p> <p>22 ALSO PRESET:</p> <p>23 Peter VanWinkle videographer</p> <p>24 Elise Fitzmaurice, SHB summer associate</p>
Page 2	Page 4
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 June 18, 2025</p> <p>7 10:00 A.M. CDT</p> <p>8</p> <p>9</p> <p>10</p> <p>11 Videotaped deposition of</p> <p>12 RANDOLPH FRESHOUR, testifying at the law offices</p> <p>13 of Shook Hardy & Bacon LLP, 111 South Wacker</p> <p>14 Drive, Suite 4700, Chicago, Illinois, 60606,</p> <p>15 USA, pursuant to notice, appearing in person</p> <p>16 before Deborah Habian, an Illinois Certified</p> <p>17 Shorthand Reporter, Registered Merit Reporter,</p> <p>18 Certified Realtime Reporter.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 I N D E X</p> <p>2 WITNESS: PAGE</p> <p>3 RANDOLPH FRESHOUR</p> <p>4 Examination by Mr. Wolfe 7</p> <p>5</p> <p>6 INSTRUCTIONS AND REQUESTS OF COUNSEL</p> <p>7 By Mr. Geske 62</p> <p>8 By Mr. Wolfe 73</p> <p>9 By Mr. Geske 77</p> <p>10</p> <p>11</p> <p>12 INDEX OF EXHIBITS</p> <p>13 DEFENDANT EXHIBITS RANDOLPH FRESHOUR DEPOSITION</p> <p>14 NUMBER DESCRIPTION PAGE</p> <p>15 Exhibit 1 Mercedes me connect e-mail 33</p> <p>16 Bates FRESHOUR_000755</p> <p>17</p> <p>18 Exhibit 2 Document re biometric data 39</p> <p>19</p> <p>20 Exhibit 3 Corrected Third Amended Class 43</p> <p>21 Action Complaint</p> <p>22</p> <p>23 Exhibit 4 Terms of Use document 63</p> <p>24 Bates FRESHOUR_000747</p>

RANDOLPH FRESHOUR
A.P. vs CERENCE INC.

June 18, 2025

25-28

<p style="text-align: right;">Page 25</p> <p>1 Q. So when you were at the desk with the</p> <p>2 salesperson, what kind of information was she</p> <p>3 gathering from you to set up the profile?</p> <p>4 A. I really don't recall.</p> <p>5 Q. Okay. And then someone else went to</p> <p>6 the car and did some things when you weren't</p> <p>7 there, right?</p> <p>8 A. Correct.</p> <p>9 Q. And then you went to the car with the</p> <p>10 salesperson and did more, right?</p> <p>11 A. Correct.</p> <p>12 Q. So what happened in that last step when</p> <p>13 you were in the car with the salesperson?</p> <p>14 A. Um... I'm trying to remember here</p> <p>15 exactly what happened. That's been so long ago.</p> <p>16 I don't remember everything. I remember some</p> <p>17 of -- parts of it.</p> <p>18 It was like a matter of -- a lot of</p> <p>19 excitement about getting this fantastic vehicle</p> <p>20 and she's just throwing stuff in the computer</p> <p>21 and I'm going, Okay, that sounds good. And she</p> <p>22 goes, What do you want to use for a password?</p> <p>23 And I said, I'll use this. And says, What's</p> <p>24 your e-mail? And, I don't know, I gave her my</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Oh, you can change all kind of</p> <p>2 features. I mean, it's -- you can change the</p> <p>3 ambient lighting in it when you get in it the</p> <p>4 next time, you can change the radio station when</p> <p>5 you get in it the next time, you can change the</p> <p>6 complete layout of the instrument cluster when</p> <p>7 you get in it the next time.</p> <p>8 Q. And that's done through the app, which</p> <p>9 if you're logged out of, you access by password</p> <p>10 and pin?</p> <p>11 A. Correct.</p> <p>12 Q. When you got home and you set up the</p> <p>13 profile for your wife, what did you all do?</p> <p>14 A. I don't remember everything. My wife's</p> <p>15 really computer savvy, and she set -- she did</p> <p>16 most of it.</p> <p>17 Q. Do you remember anything about it?</p> <p>18 A. No. I mean, just her putting her name</p> <p>19 in it, and that's about it. That's about all I</p> <p>20 remember. But she was in there for awhile doing</p> <p>21 different things.</p> <p>22 Q. Does she ever drive the vehicle with</p> <p>23 her profile on and you in the passenger seat?</p> <p>24 A. Yes, occasionally.</p>
<p style="text-align: right;">Page 26</p> <p>1 e-mail and she put that in there, and then...</p> <p>2 that's about all I remember.</p> <p>3 Q. You said you created a password. Do</p> <p>4 you know what you would use this password for on</p> <p>5 the vehicle?</p> <p>6 A. It's for the app. Mainly to get in the</p> <p>7 app that's on my phone.</p> <p>8 Q. So if your phone is connected to --</p> <p>9 A. My phone is connected to the car.</p> <p>10 Q. -- you need the password in order to do</p> <p>11 that?</p> <p>12 A. Right. And a pin.</p> <p>13 Q. Got it.</p> <p>14 A. Like I can remote start the car. But</p> <p>15 if I get completely logged out of the app, then</p> <p>16 I have to use my e-mail and my password to get</p> <p>17 back in the app. And then once I'm in the app,</p> <p>18 I have to have a pin code to do certain</p> <p>19 functions on it.</p> <p>20 Q. You can use the app to remote start the</p> <p>21 car?</p> <p>22 A. Correct.</p> <p>23 Q. What else can you do with the app that</p> <p>24 you can think of?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Do -- so are there things that you</p> <p>2 notice that are different about her setup than</p> <p>3 are -- than from yours?</p> <p>4 A. Well, I mean, her seat position, the</p> <p>5 radio station that she likes, all those things</p> <p>6 are changed.</p> <p>7 Q. And she activates that by tapping her</p> <p>8 name on the screen --</p> <p>9 A. Correct.</p> <p>10 Q. -- when she turns the vehicle on?</p> <p>11 A. (Nodding.)</p> <p>12 I don't remember everything that went</p> <p>13 into setting that up that the first time. Like</p> <p>14 I said, when I -- when I was at the dealership,</p> <p>15 I was pretty excited about getting this vehicle.</p> <p>16 And pretty much if the salesperson told me,</p> <p>17 well, you have to do this, you have to do this,</p> <p>18 I went and I did it, you know. And...</p> <p>19 Q. Sounds like an amazing vehicle.</p> <p>20 A. It is.</p> <p>21 Q. Do you remember saying "Hey Mercedes"</p> <p>22 multiple times so that the software could learn</p> <p>23 your voice?</p> <p>24 A. Yes.</p>

RANDOLPH FRESHOUR
A.P. vs CERENCE INC.

June 18, 2025

29-32

<p style="text-align: right;">Page 29</p> <p>1 Q. When did you do this?</p> <p>2 A. At the dealer.</p> <p>3 Q. Tell me everything you remember about</p> <p>4 that.</p> <p>5 A. Just having to say "Hey Mercedes," and</p> <p>6 it like wakes up the system.</p> <p>7 Q. Did the salesperson tell you to do</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. And what was her explanation of why you</p> <p>11 needed to do it?</p> <p>12 A. No explanation.</p> <p>13 Q. Do you use the "Hey Mercedes" feature</p> <p>14 now in the vehicle?</p> <p>15 A. Constantly.</p> <p>16 Q. Did you use it on the drive up here?</p> <p>17 A. Yeah, several times.</p> <p>18 Q. Okay, give me some examples of what you</p> <p>19 used it for.</p> <p>20 A. You say "Hey Mercedes, I need to</p> <p>21 navigate to 111 East Wacker," and it'll take me</p> <p>22 right here from anywhere in the United States.</p> <p>23 Q. Are there other things that the "Hey</p> <p>24 Mercedes" feature is used for besides</p>	<p style="text-align: right;">Page 31</p> <p>1 software you're currently on in the vehicle?</p> <p>2 A. Don't have a clue.</p> <p>3 Q. If you needed to find that out, would</p> <p>4 you know how to do it?</p> <p>5 A. I might be able to do it on my app. I</p> <p>6 don't know.</p> <p>7 Q. So is your case based on the allegation</p> <p>8 that Cerence is collecting your voiceprint when</p> <p>9 you say "Hey Mercedes"?</p> <p>10 A. I'm not sure exactly what it's based</p> <p>11 on. It's in the filings that you have.</p> <p>12 Q. Okay. Do you believe that your voice</p> <p>13 is being collected all the time every time</p> <p>14 you're talking in the car or only when you're</p> <p>15 giving the "Hey Mercedes" voice commands?</p> <p>16 A. I have no idea.</p> <p>17 Q. Okay. Are there any other kinds of</p> <p>18 commands that you give to the car besides "Hey</p> <p>19 Mercedes, navigate to this place," or "change my</p> <p>20 temperature," things like this?</p> <p>21 A. It seems that when you say "Hey</p> <p>22 Mercedes," it wakes up the system. That's an</p> <p>23 assumption that I'm making, that -- does the car</p> <p>24 possibly have the ability to listen to every</p>
<p style="text-align: right;">Page 30</p> <p>1 navigation?</p> <p>2 A. Turn the temperature up in the cabin,</p> <p>3 change the radio station.</p> <p>4 Q. Has anybody else besides you and your</p> <p>5 wife ever had a personal profile on this</p> <p>6 vehicle?</p> <p>7 A. No. I need to put a caveat behind.</p> <p>8 The people who owned it before me did.</p> <p>9 Q. And you understand that was deleted by</p> <p>10 the dealer before you drove it off the lot?</p> <p>11 A. To my understanding, yes.</p> <p>12 Q. Do you have to create a profile to</p> <p>13 drive the car?</p> <p>14 A. I guess you could use the guest</p> <p>15 profile.</p> <p>16 Q. Do you have, since you've had this</p> <p>17 vehicle, any memory of getting software updates</p> <p>18 for it?</p> <p>19 A. All the time.</p> <p>20 Q. Tell me about how that process works.</p> <p>21 A. It -- I just get in the car, and it</p> <p>22 says it had received an over-the-air software</p> <p>23 update.</p> <p>24 Q. Do you know what version of the</p>	<p style="text-align: right;">Page 32</p> <p>1 word that's said in that cabin? I would believe</p> <p>2 yes.</p> <p>3 Q. When you want to load your personal</p> <p>4 profile to drive the car, can you activate that</p> <p>5 by saying "Hey Mercedes, it's Randall"?</p> <p>6 A. I would imagine you could.</p> <p>7 Q. Have you ever tried it?</p> <p>8 A. No.</p> <p>9 Q. You use the touch screen?</p> <p>10 A. (Nodding.) That's what I've always</p> <p>11 used, I mean, from the very start. I -- but I</p> <p>12 would imagine if I said "Hey Mercedes, it's</p> <p>13 Randolph," it would go "Okay, thank you," and</p> <p>14 everything would take off.</p> <p>15 Q. Are you familiar with something called</p> <p>16 Mercedes me?</p> <p>17 A. Yes.</p> <p>18 Q. What's that?</p> <p>19 A. That's -- to my understanding, that's</p> <p>20 the app.</p> <p>21 Q. Do you pay to use this?</p> <p>22 A. \$150 a year.</p> <p>23 MR. WOLFE: Okay, I'm going to -- I'm</p> <p>24 going to show you a few exhibits just sort of to</p>

RANDOLPH FRESHOUR
A.P. vs CERENCE INC.

June 18, 2025

41-44

<p style="text-align: right;">Page 41</p> <p>1 BY MR. WOLFE:</p> <p>2 Q. You can answer.</p> <p>3 A. I have no idea.</p> <p>4 Q. Have you ever investigated whether any</p> <p>5 voice data collected from you could be deleted?</p> <p>6 A. No.</p> <p>7 Q. You've never asked anybody about that?</p> <p>8 A. No.</p> <p>9 Q. You've never looked into it on the</p> <p>10 vehicle like in the settings or anything like</p> <p>11 that?</p> <p>12 A. Once I found through the investigation</p> <p>13 of my attorneys that there was a problem, I've</p> <p>14 limited myself to talking to my attorneys about</p> <p>15 this and not talking to anyone else.</p> <p>16 So I haven't inquired about it with</p> <p>17 anybody at Mercedes or anyone else about how to</p> <p>18 delete this. I've kept my communication on this</p> <p>19 case between me and my attorneys.</p> <p>20 Q. And you haven't looked into it yourself</p> <p>21 on the vehicle or the app either, right?</p> <p>22 A. No.</p> <p>23 Q. Have we discussed all aspects of the</p> <p>24 voice technology in your car that you think is</p>	<p style="text-align: right;">Page 43</p> <p>1 A. I don't have any clue what Cerence has</p> <p>2 done with my information.</p> <p>3 Q. Do you know whether you are alleging</p> <p>4 Cerence sold or profited from your biometric</p> <p>5 information?</p> <p>6 A. I am -- I imagine if they wanted to,</p> <p>7 they could.</p> <p>8 Q. But are you alleging that they actually</p> <p>9 did?</p> <p>10 A. I don't know whether they did or not.</p> <p>11 Q. Are you alleging that Cerence failed to</p> <p>12 obtain your consent before collecting your</p> <p>13 biometric information?</p> <p>14 A. Yes.</p> <p>15 Q. Are there any other theorys of</p> <p>16 liability that you're alleging against Cerence,</p> <p>17 if you know?</p> <p>18 MR. GESKE: Objection, calls for a</p> <p>19 legal conclusion.</p> <p>20 But you can answer.</p> <p>21 THE WITNESS: Other than what's in the</p> <p>22 filings, no.</p> <p>23 (Freshour Exhibit 3 was marked</p> <p>24 for ID.)</p>
<p style="text-align: right;">Page 42</p> <p>1 pertinent to your case?</p> <p>2 A. To my knowledge.</p> <p>3 Q. Have you ever had any problems with the</p> <p>4 software on your car?</p> <p>5 A. I don't believe so.</p> <p>6 Q. And by "software," I'm referring</p> <p>7 specifically to the touch screen User Experience</p> <p>8 software.</p> <p>9 A. (Shaking head.)</p> <p>10 Q. No problems with it?</p> <p>11 A. No problems.</p> <p>12 Q. Have you ever had to get it fixed at</p> <p>13 the dealer or anything like that?</p> <p>14 A. It's been to the dealer mainly for</p> <p>15 general maintenance, and I had to go one time</p> <p>16 and they had to change my starter batteries.</p> <p>17 It's got two different sets of batteries in it</p> <p>18 for some reason.</p> <p>19 Q. Huh. Okay.</p> <p>20 A. And the starter battery was bad, and</p> <p>21 they had to change it.</p> <p>22 Q. Interesting. Okay, are you alleging</p> <p>23 that Cerence provided your biometric information</p> <p>24 to anyone else?</p>	<p style="text-align: right;">Page 44</p> <p>1 BY MR. WOLFE:</p> <p>2 Q. Mr. Freshour, I've marked a document as</p> <p>3 Exhibit 3. Take your time to review it if you</p> <p>4 want to.</p> <p>5 A. (Reviewing document.)</p> <p>6 Would you ask me questions, sir? Go</p> <p>7 ahead, ask.</p> <p>8 Q. Okay. Do you know what this document</p> <p>9 is?</p> <p>10 A. This is the actual case filing. Isn't</p> <p>11 it?</p> <p>12 Q. Have you seen it before?</p> <p>13 A. Yes.</p> <p>14 Q. Did you have a part in preparing it?</p> <p>15 A. A little, yes.</p> <p>16 Q. What was your role in preparing the</p> <p>17 complaint?</p> <p>18 A. Answering the questions that my</p> <p>19 attorney gave me in order for him to complete</p> <p>20 the paperwork.</p> <p>21 Q. Did you review the complaint before it</p> <p>22 was filed?</p> <p>23 A. Yes, I did.</p> <p>24 Q. And did you approve of it before it was</p>

RANDOLPH FRESHOUR
A.P. vs CERENCE INC.

June 18, 2025

45-48

<p style="text-align: right;">Page 45</p> <p>1 filed?</p> <p>2 A. Yes, I did.</p> <p>3 Q. I want to ask you a few things about</p> <p>4 some material that starts on page 13. So</p> <p>5 there's a paragraph 46 towards the top. Do you</p> <p>6 see that?</p> <p>7 A. Um-hum.</p> <p>8 Q. All right. It says "In or about August</p> <p>9 of 2022, Plaintiff Randolph Freshour purchased a</p> <p>10 2021 AMG GLC43 model Mercedes-Benz."</p> <p>11 That's you, right?</p> <p>12 A. Um-hum.</p> <p>13 Q. And that's the car we've been talking</p> <p>14 about today?</p> <p>15 A. Correct.</p> <p>16 Q. And it says "Upon arriving to his home</p> <p>17 in Illinois, Plaintiff Freshour's automobile's</p> <p>18 operating system prompted him to make a personal</p> <p>19 profile with the 'MBUX' voice assistant system</p> <p>20 powered by Cerence Drive."</p> <p>21 Do you see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Okay, earlier we talked about that you</p> <p>24 set up the profile at the dealer, correct?</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. I'm sorry to hear that.</p> <p>2 Okay, we can go to the next paragraph.</p> <p>3 In 47, it says, as part of the process, you were</p> <p>4 required to provide your first and last name and</p> <p>5 e-mail address?</p> <p>6 A. Correct.</p> <p>7 Q. So what do you remember about that?</p> <p>8 A. Nothing. It's like a blank in my mind.</p> <p>9 I'm -- I apologize, I --</p> <p>10 Q. All right, but you believe you would</p> <p>11 have given this information to your attorney</p> <p>12 when the complaint was drafted?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. But you don't remember anything</p> <p>15 about it now?</p> <p>16 A. I --</p> <p>17 Q. It's okay.</p> <p>18 A. I apologize. It's like blank. I</p> <p>19 mean...</p> <p>20 Q. Now, on 48, it says "During the</p> <p>21 registration process, Plaintiff Freshour was</p> <p>22 also prompted to repeatedly say 'Hey Mercedes'</p> <p>23 to the MBUX voice assistant."</p> <p>24 Do you see that?</p>
<p style="text-align: right;">Page 46</p> <p>1 A. That's my recollection at this point.</p> <p>2 Q. Okay.</p> <p>3 A. I would like to add that I am 71 years</p> <p>4 old and do have a little bit of a memory</p> <p>5 problem. I just had a stroke a year and a half</p> <p>6 ago, so some of my memory is not as good as it</p> <p>7 used to be.</p> <p>8 Q. I completely understand that, and I am</p> <p>9 not trying to trick you. Okay?</p> <p>10 A. Okay.</p> <p>11 Q. I just want to make sure I understand</p> <p>12 everything that's in here.</p> <p>13 So it says "Upon arriving to his</p> <p>14 home..." Your memory today is it was actually</p> <p>15 at the dealer; is that right?</p> <p>16 A. If this is what I said to my attorney</p> <p>17 back then, this (indicating to document) is</p> <p>18 probably more accurate and because it was more</p> <p>19 fresh in my memory at that point than it is now</p> <p>20 here we are, what, four years later.</p> <p>21 Q. Um-hum.</p> <p>22 A. And, like I said, I did have a stroke</p> <p>23 in between there and a heart attack also. But</p> <p>24 who's counting at this point.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Correct.</p> <p>2 Q. Do you remember anything about that?</p> <p>3 A. I do remember that.</p> <p>4 Q. Okay. And what -- where do you</p> <p>5 remember doing that?</p> <p>6 A. I -- at this point in time, I believe I</p> <p>7 did it at the dealership. I may have done it at</p> <p>8 home. I don't remember.</p> <p>9 Q. Okay. And then in the next sentence</p> <p>10 that starts "Unbeknownst to Plaintiff..."</p> <p>11 A. Correct.</p> <p>12 Q. It says that the Cerence Drive software</p> <p>13 was integrated into the voice assistant and was</p> <p>14 collecting and so on your voiceprint.</p> <p>15 Do you see that?</p> <p>16 A. Correct.</p> <p>17 Q. Is that based on your attorneys'</p> <p>18 investigation?</p> <p>19 A. Correct.</p> <p>20 Q. And you are relying on the attorneys</p> <p>21 for that, right?</p> <p>22 A. I am.</p> <p>23 Q. All right. And you don't have any</p> <p>24 additional information about it?</p>

RANDOLPH FRESHOUR
A.P. vs CERENCE INC.

June 18, 2025

49-52

Page 49

1 A. No.

2 Q. Then in 49, it says "Following

3 registration with the MBUX voice assistant,

4 every instance in which Plaintiff Freshour said

5 'Hey Mercedes' in his vehicle..."

6 And then it goes on a little bit, and

7 then it says the voice assistant is collecting,

8 capturing and storing and so on. Do you see

9 that?

10 A. Correct.

11 Q. Do -- in this paragraph, do you have

12 any -- personally, do you have any information

13 supporting this paragraph or are you relying

14 entirely on your attorneys' investigation?

15 A. (Reviewing document.)

16 I believe some of this is information

17 that I provided to my attorneys.

18 Q. Okay, so what parts did you provide?

19 A. About where I say "Hey Mercedes," and I

20 told them the same things that I told you

21 earlier in this conversation about what the

22 personal assistant was capable of. And we had

23 this discussion earlier.

24 Q. Yes, we did.

Page 50

1 A. Yeah.

2 Q. Do you have anything else to add to

3 that discussion?

4 A. I have nothing to add.

5 Q. Okay. Then if you go to the next page,

6 the paragraph 50, it says "...Defendant failed

7 to obtain valid written consent as required by

8 BIPA. Defendant also failed to provide

9 Plaintiff Freshour with any written disclosures"

10 and so on.

11 Do you have any personal knowledge

12 about this paragraph or are you relying on what

13 your attorneys said?

14 A. I'm mainly relying on what my attorneys

15 told me, plus the fact that I did never receive

16 anything as far as having any kind of informed

17 consent to this portion of their process.

18 Q. And then in paragraph 51, it says

19 "Further, on information and belief, Defendant

20 unlawfully disclosed Plaintiff Freshour's and

21 other Class members' biometrics to its

22 third-party cloud and data storage vendors."

23 And do you have any personal

24 information about that paragraph?

Page 51

1 A. I'm depending on my attorneys on that

2 investigation.

3 Q. Okay. Do you know what court this case

4 is pending in?

5 A. Court of Northern Illinois, Eastern

6 Division.

7 Q. Did you know that there's also a second

8 case pending in another court?

9 A. I did not.

10 Q. This is the Corrected Third Amended

11 Class Action Complaint. Do you see that? It's

12 the title of the document.

13 A. Where's that?

14 Q. If you go to the very first page, it's

15 right at the start of the document.

16 A. Okay. This page here (indicating)?

17 Q. Yes, sir. You see the title there

18 Corrected --

19 A. The third...

20 Q. -- Third Amended Complaint?

21 A. Okay.

22 Q. Do you know why this is the Third

23 Amended Complaint?

24 A. I have no idea.

Page 52

1 Q. Do you know what any differences are

2 between this one and previous ones that are

3 filed?

4 A. I do not.

5 Q. Who represents you on this case?

6 A. Colin.

7 Q. What about the other guy?

8 A. I met him recently.

9 Q. Colin has been your primary contact?

10 A. Colin has been my primary contact.

11 THE WITNESS: Sorry, Paul.

12 MR. GESKE: That's all right. No

13 offense taken.

14 BY MR. WOLFE:

15 Q. How did you find your lawyers?

16 A. I was cruising through Facebook back in

17 2023, spring of 2023, and I saw a thing that

18 says "If you owned a Mercedes-Benz vehicle that

19 has this and this and this kind of options, give

20 us a call, there might be a lawsuit." And I

21 made the call.

22 Q. Do you still have a copy of that

23 advertisement that you saw?

24 A. I do not. I imagine you do.

RANDOLPH FRESHOUR
A.P. vs CERENCE INC.

June 18, 2025

53-56

<p style="text-align: right;">Page 53</p> <p>1 Q. So did you make a phone call to inquire 2 about that or did you send an e-mail? How did 3 you get in touch with them? 4 A. I do not remember whether I e-mailed or 5 called, but I know that shortly after that, I 6 spoke with Colin, and it took off from there. 7 Q. Why did you decide you wanted to file 8 the lawsuit? 9 A. Well, if you think about it, if -- it's 10 the only way you can get some of these companies 11 to reel in their practices. They're not doing 12 the right thing. So if somebody had to file it, 13 why not me. 14 Q. Was it your idea to file a lawsuit? 15 A. Colin told me we had grounds for it, 16 so... 17 Q. Did you talk to any other attorneys or 18 law firms about this case? 19 A. I did not. 20 Q. Do you know who Vincenzo Allan is? 21 A. I do not other than the fact that he's 22 also a named plaintiff. 23 Q. Do you know if at any time there were 24 other plaintiffs in the case, named plaintiffs?</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. And do you know who's included in the 2 proposed class? 3 A. I do not. 4 Q. Are you monitoring or following the 5 case in any way? 6 A. Am I what? 7 Q. Are you monitoring the case or 8 following it in any way? 9 A. Other than occasional conversations 10 with Colin on what's going on, no. 11 Q. How many conversations have you had 12 with Colin about the case in the two years since 13 it was filed? 14 A. Maybe nine or ten. Possibly more. I 15 have no idea. 16 Q. Have you participated in developing 17 case strategy? 18 A. No. 19 Q. Do you know if anybody besides you has 20 had their deposition taken yet in this case? 21 A. No. 22 Q. Have you seen any documents that 23 Cerence turned over in the case? 24 A. No.</p>
<p style="text-align: right;">Page 54</p> <p>1 A. I don't know. 2 Q. You understand this is a proposed class 3 action case? 4 A. I do. 5 Q. What does that mean to you? 6 A. It means that there is a number of 7 people who may have been wronged in this action 8 and that I am just a representative of them, and 9 I'm up here to put the best foot forward and 10 answer the questions to the best of my ability 11 to get action to make them whole. 12 Q. Is it safe to say that you want to be 13 the class representative? 14 A. I was kind of thrust into the 15 situation. I wasn't going, hey, make me the 16 class representative. I -- you know, I had 17 no -- I have never been in this position in my 18 life. And not sure I like it to begin with. 19 Q. What do you mean by you were thrust 20 into the situation? 21 A. Well, I mean, I guess I was one of the 22 first people to act, and Colin said, Hey, you're 23 a representative of the class. And I took on 24 the responsibility of doing that.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. You said you reviewed and approved the 2 complaint. Have you reviewed or approved any 3 other documents that your attorneys submitted in 4 the case? 5 A. I believe I may have. And, like I 6 said, since -- since the inception of this, I've 7 been through a lot. So it's hard for me to say. 8 Q. Do you remember anything specifically 9 right now -- 10 A. No. 11 Q. -- that you reviewed and approved? 12 Are you paying your attorneys to 13 represent you in the case? 14 A. No. 15 Q. Is there an agreement about fees? 16 A. No. 17 Q. What are your expectations for how 18 they're going to get paid? 19 A. My expectation is that they'll get a 20 percentage of whatever is paid out. I have no 21 idea what that percentage is and don't find it 22 to be any of my business. 23 Q. What damages are you seeking in the 24 case, if any?</p>

EXHIBIT 7
CONFIDENTIAL
FILED UNDER SEAL

EXHIBIT 8

Your order in the Mercedes me connect Store DS-A-C14255703 of 5/22/24

1 attachment (34 KB)

MBUS_Refund-Policy_2024-02.pdf;

On Wednesday, May 22, 2024, 12:13 PM, noreply@email.mercedes-benz.com wrote:



FRESHOUR_000112

Order confirmation

Order number: DS-A-C14255703

Date of order: 5/22/24

Hi Randolph,

Thank you for your order DS-A-C14255703 on 5/22/24.

Here's all your essential information about activating your Mercedes me connect services.

Your invoice will be sent in a separate email.

Your next steps

Please note certain services may require you to log in to the Mercedes me connect Portal to fill in your profile data before you can use the service. Where this is required click on the tile of the service you wish to activate to get started.

If you have purchased an **on-demand feature**, this will be provided immediately and automatically when you turn on your ignition (dependent on vehicle Internet connection). The feature will then be displayed in your multimedia system and will be ready to use.

If you would like to know more about Mercedes-Benz USA's refund policy, please visit <https://www.mbusa.com/en/legal-notices/connected-vehicle> for more information.

Kind regards,

Mercedes-Benz USA, LLC

Mercedes me
connect Portal

Mercedes me
connect Store

Your order

Billing address

Mr.
Randolph Freshour



Mode of payment

VISA



Mercedes-Benz Connect

(Item number: QEV111AJQG6N)

- For Mercedes-AMG GLC 43 4MATIC SUV (VIN: W1N0G6EB0MF896840)
- Availability: 12 months

One-off payment: \$150.00

One-off payment (incl. tax)

\$150.00

The items are distributed by Mercedes-Benz USA, LLC.

Mercedes-Benz USA, LLC

One Mercedes-Benz Drive, Atlanta, Georgia 30328

Telephone: (800) 367-6372

Email: me-connect.usa@cac.mercedes-benz.com



This is an automatically generated e-mail. Please do not reply.

© 2024. Mercedes-Benz USA, LLC. All rights reserved (provider).

FRESHOUR_000114

EXHIBIT 9



Mercedes-Benz

Mercedes-Benz USA, LLC
A Mercedes-Benz Group AG Company

Customer Data

Mr.

Randolph Freshour

[REDACTED]

USA

Invoice

Customer Code	4930593679
Payment method	CREDIT CARD
Number	[REDACTED]
Date	05/22/2024
Purchase order number	DS-A-C14255703
Order date	05/22/2024

Page 1 / 2

Your order

Item	License and description	Quantity	Unit Price	Taxes	Total Price
1	Mercedes-Benz Connect Valet Protect Car-to-X Communication Geofencing Online Map Update Stolen Vehicle Assistance Remote Vehicle Finder Vehicle Locator Live Traffic Information Vehicle Tracker Remote Door Lock & Unlock Personalization Local Search Parking for Navigation Global Search Weather map Theft Notification and Parking Damage Detection Weather forecast Remote Engine Start W1N0G6EB0MF896840 Product Code QEV111AJQG6N This product is valid for one year from the date of activation	1	150.00 USD	0.00 USD	150.00 USD

Mercedes-Benz USA, LLC
 One Mercedes-Benz Drive
 Sandy Springs, Georgia 30328

Tel : +1 (800) 367-6372
 Email: me-connect.usa@cac.mercedes-benz.com
www.mbusa.com



Mercedes-Benz - are registered trademarks of Mercedes-Benz Group AG, Stuttgart, Germany

FRESHOUR_000147



Mercedes-Benz

Mercedes-Benz USA, LLC
A Mercedes-Benz Group AG Company

Customer Data

Mr.

Randolph Freshour



Invoice

Customer Code	4930593679
Payment method	CREDIT CARD
Number	[REDACTED]
Date	05/22/2024
Purchase order number	DS-A-C14255703
Order date	05/22/2024

Page 2 / 2

Subtotal	150.00	USD
Sales Tax	0.00	USD
Total Price	150.00	USD

Mercedes-Benz USA, LLC
One Mercedes-Benz Drive
Sandy Springs, Georgia 30328

Tel : +1 (800) 367-6372
Email: me-connect.usa@cac.mercedes-benz.com



Mercedes-Benz - are registered trademarks of Mercedes-Benz Group AG, Stuttgart, Germany

FRESHOUR_000148

EXHIBIT 10

VINCENZO ALLAN
FRESHOUR and ALLAN vs CERENCE

July 11, 2025

1-4

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF ILLINOIS</p> <p>3 EASTERN DIVISION</p> <p>4</p> <p>5 RANDOLPH FRESHOUR and)</p> <p>6 VINCENZO ALLAN, each)</p> <p>7 individually and on behalf)</p> <p>8 of similarly situated)</p> <p>9 individuals,)</p> <p>10 Plaintiffs,)</p> <p>11 vs.) No. 1:23-cv-02667</p> <p>12 CERENCE INC., a Delaware)</p> <p>13 corporation,)</p> <p>14 Defendant.)</p> <p>15</p> <p>16 The videotaped deposition of VINCENZO</p> <p>17 ALLAN, called as a witness for examination, taken</p> <p>18 pursuant to the Federal Rules of Civil Procedure of</p> <p>19 the United States District Courts pertaining to the</p> <p>20 taking of depositions, taken before VICTORIA C.</p> <p>21 CHRISTIANSEN, a Certified Shorthand Reporter of the</p> <p>22 State of Illinois, CSR No. 84-3192, at Suite 4700,</p> <p>23 111 South Wacker Drive, Chicago, Illinois, on the</p> <p>24 11th day of July, A.D. 2025, at 10:03 a.m.</p>	<p style="text-align: right;">Page 3</p> <p>1 THE VIDEOGRAPHER: All right. We are now on</p> <p>2 the video record.</p> <p>3 This is Tape No. 1 to the videotaped</p> <p>4 deposition of Vincenzo Allan in the matter of</p> <p>5 Freshour, et al., vs. Cerence Incorporated, being</p> <p>6 heard before the U.S. Dist- -- District Court for</p> <p>7 the Northern District of Illinois, Eastern</p> <p>8 Division, Case No. 1:23-cv-01667 [sic].</p> <p>9 This deposition is being held at Shook,</p> <p>10 Hardy & Bacon LLP on July 11, 2025 at the time of</p> <p>11 10:03 a.m.</p> <p>12 My name is Peter Van Winkle. I'm the</p> <p>13 videographer. The court reporter is Vicki</p> <p>14 Christiansen.</p> <p>15 Counsel, will you please introduce</p> <p>16 yourselves and affiliations and the witness will be</p> <p>17 sworn.</p> <p>18 MS. KEELEY: Meghan Keeley for Defendant</p> <p>19 Cerence Inc.</p> <p>20 MR. WOLFE: Matt Wolfe also for defendant.</p> <p>21 MR. GESKE: Paul Geske of McGuire Law for</p> <p>22 plaintiff.</p> <p>23 MR. BUSCARINI: Colin Buscarini of McGuire Law</p> <p>24 for plaintiff, as well.</p>
<p style="text-align: right;">Page 2</p> <p>1 PRESENT:</p> <p>2 MCGUIRE LAW, P.C.,</p> <p>3 (55 West Wacker Drive, 9th Floor,</p> <p>4 Chicago, Illinois 60601,</p> <p>5 312-893-7002), by:</p> <p>6 MR. PAUL T. GESKE,</p> <p>7 pgeske@mcgpc.com, and</p> <p>8 MR. COLIN PRIMO BUSCARINI,</p> <p>9 cbuscarini@mcgpc.com,</p> <p>10</p> <p>11 appeared on behalf of the Plaintiffs;</p> <p>12</p> <p>13 SHOOK, HARDY & BACON LLP,</p> <p>14 (111 South Wacker Drive, Suite 4700,</p> <p>15 Chicago, Illinois 60606,</p> <p>16 312-704-7700), by:</p> <p>17 MS. MEHGAN E.H. KEELEY,</p> <p>18 mkeeley@shb.com, and</p> <p>19 MR. MATTHEW C. WOLFE,</p> <p>20 mwolfe@shb.com,</p> <p>21 appeared on behalf of the Defendant.</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24 MS. KELSEY COOPER, Law Clerk,</p> <p>McGuire Law, P.C.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 VIDEOTAPED BY: PETER VAN WINKLE,</p> <p>22 Legal Videographer,</p> <p>23 Esquire Deposition Solutions;</p> <p>24 REPORTED BY: VICTORIA C. CHRISTIANSEN, RPR, CRR,</p> <p>Illinois CSR No. 84-3192.</p>	<p style="text-align: right;">Page 4</p> <p>1 MS. COOPER: Kelsey -- Kelsey Cooper of</p> <p>2 McGuire Law for the plaintiff.</p> <p>3 (WHEREUPON, the witness was duly</p> <p>4 sworn.)</p> <p>5 VINCENZO ALLAN,</p> <p>6 called as a witness herein, having been first duly</p> <p>7 sworn, was examined and testified as follows:</p> <p>8 EXAMINATION</p> <p>9 BY MS. KEELEY:</p> <p>10 Q. Okay. Mr. Allan, can you please state</p> <p>11 your name and address for the record.</p> <p>12 A. Vincenzo Allan, 2150 McDonald's Drive,</p> <p>13 Unit 13- -- 1312, Oak Brook, Illinois 60523.</p> <p>14 Q. Okay. And have you gone by any prior</p> <p>15 names other than the one you just provided?</p> <p>16 A. Correct.</p> <p>17 Q. And what was that?</p> <p>18 A. M-o-h-a-m-m-a-d. Same last name.</p> <p>19 Q. Okay. Thanks. Have you ever been</p> <p>20 deposed before?</p> <p>21 A. No.</p> <p>22 Q. Okay. Have you provided testimony in</p> <p>23 court before?</p> <p>24 A. No.</p>

VINCENZO ALLAN
FRESHOUR and ALLAN vs CERENCE

July 11, 2025

33-36

Page 33

1 received any.

2 Can you --

3 A. The --

4 Q. -- clarify your understanding of the

5 difference?

6 MR. GESKE: Object to the form and lack of

7 foundation.

8 If -- if you want to ask him about a

9 specific one, maybe we could use it as an exhibit.

10 BY MS. KEELEY:

11 Q. I'm just kind of trying to find out your

12 understanding of the difference between the ones

13 you produced in this case and what -- you said

14 earlier that you didn't receive any, so I'm just

15 trying to understand how you distinguish them.

16 MR. GESKE: Yeah, same objections.

17 So if you want to ask him about a

18 specific document that was produced, then it would

19 help to -- to show it.

20 MS. KEELEY: Yeah, I --

21 MR. GESKE: Yeah, I --

22 MS. KEELEY: -- I don't have a question about

23 a specific document right now, so are you directing

24 him not to answer the question or --

Page 34

1 MR. GESKE: No, I'm -- I'm just trying to help

2 you get the testimony that you're looking for.

3 MS. KEELEY: Okay.

4 BY THE WITNESS:

5 A. So --

6 BY MS. KEELEY:

7 Q. We can return to this.

8 A. So -- so you're asking -- can you re- --

9 so --

10 MR. GESKE: That's okay. There isn't -- there

11 isn't a question pending.

12 THE WITNESS: Okay.

13 MR. GESKE: Yeah.

14 BY MS. KEELEY:

15 Q. Okay. Let's talk about your vehicle

16 history a little bit.

17 How many -- how many cars do you

18 currently own?

19 A. As of right now, I only own one.

20 Q. Okay. And are you leasing any cars

21 right now?

22 A. No.

23 Q. Okay. What type of car do you currently

24 own?

Page 35

1 A. A Cadillac Escalade.

2 Q. Okay. Do you know how many cars you've

3 owned in the last five years?

4 A. Maybe 10, 15.

5 THE VIDEOGRAPHER: Sorry. If you could try

6 not to cover --

7 THE WITNESS: Oh, sorry, yeah.

8 BY MS. KEELEY:

9 Q. Okay. You've owned 10 or 15 cars in the

10 last ten years?

11 A. Yeah.

12 Q. And how many of those were Mercedes-Benz

13 vehicles?

14 A. I believe three or four.

15 Q. Okay. Well, do you remember what the

16 first model of a Mercedes-Benz was that you

17 purchased?

18 A. I believe that was in 2018. It was a

19 GLS, I don't know, 450, 550, one of those.

20 Q. And then what are the other three kinds

21 of Mercedes that you've owned?

22 A. A 2020 C 63 S, a 2022 S 580, a

23 2023 E 63 S.

24 Q. And of those four Mercedes vehicles,

Page 36

1 which ones are the subject of your -- what you're

2 suing Cerence about?

3 A. So all -- the -- the last three, the --

4 the recent three. I don't recall whether or not --

5 I'm sure I've used the Mercedes Me in the 2018, but

6 that was about seven years.

7 Q. Okay, okay. Let's -- let's start with

8 the -- the C 63 S.

9 A. Sure.

10 Q. Did you -- well, actually, I'll back up

11 and first I'll ask: Of the -- the three vehicles

12 that you said are at issue in the lawsuit, did you

13 own any of them at the same time?

14 A. I believe I owned the C 63 and the S 580

15 at the same time.

16 Q. Okay. How long did you own both of them

17 for?

18 A. The C 63, to my best of knowledge, was

19 from November -- around November of '19 to I would

20 say sometime towards the -- you know what? Towards

21 the middle or beginning of 2022.

22 The next car? Which other car were you

23 asking you me about?

24 Q. My question is how long did you own both

VINCENZO ALLAN
FRESHOUR and ALLAN vs CERENCE

July 11, 2025

37-40

<p style="text-align: right;">Page 37</p> <p>1 the C 63 S and the S 580 at the same time.</p> <p>2 A. The S 5- -- oh, at the same time? Maybe</p> <p>3 three months.</p> <p>4 Q. Okay. For the C 63 S, did you buy that</p> <p>5 new or used?</p> <p>6 A. New.</p> <p>7 Q. Okay. Did anybody else drive that car?</p> <p>8 A. Just me.</p> <p>9 Q. And then how about for the S 580? You</p> <p>10 mentioned that you owned that around three months</p> <p>11 at the same time as the prior Mercedes.</p> <p>12 Do you remember when you purchased and</p> <p>13 sold that car?</p> <p>14 A. I believe I purchased that sometime near</p> <p>15 the beginning of 2022.</p> <p>16 Q. Okay. And when did you sell it?</p> <p>17 A. So that car was not sold. That car was</p> <p>18 involved in a motor vehicle collision and was</p> <p>19 deemed a total loss.</p> <p>20 Q. Okay. When was that?</p> <p>21 A. That was in March of '23.</p> <p>22 Q. Okay. Do you remember if that was</p> <p>23 before or after you filed the lawsuit?</p> <p>24 A. No, I don't remember whether or not that</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. And did anybody else drive that car?</p> <p>2 A. No.</p> <p>3 Q. Okay. And the Cadillac Escalade that</p> <p>4 you own today, do you have any voice technology in</p> <p>5 that vehicle?</p> <p>6 A. If there is voice technology in that</p> <p>7 vehicle, I have not used it.</p> <p>8 Q. Okay. Why not?</p> <p>9 A. I prefer not to have any company saving</p> <p>10 my information within their servers, so no, I have</p> <p>11 not used any voice technology in that vehicle.</p> <p>12 Q. Okay. And so are you alleging that you</p> <p>13 used voice technology in your E 63 S?</p> <p>14 A. I used voice tech in my C 63, the S 580</p> <p>15 and the E 63.</p> <p>16 Q. Okay. And when did you decide that you</p> <p>17 no longer wanted to use voice technology in your</p> <p>18 vehicles?</p> <p>19 A. Sometime -- like a few months into me</p> <p>20 owning the E 63.</p> <p>21 Q. Okay. And what did you do to stop using</p> <p>22 it at that time?</p> <p>23 A. I deleted my user profile out of the</p> <p>24 vehicle.</p>
<p style="text-align: right;">Page 38</p> <p>1 was before or after.</p> <p>2 Q. Okay. Did anybody else drive that car?</p> <p>3 A. No.</p> <p>4 Q. Okay. And then I think the third you</p> <p>5 said was the E 63 S, right?</p> <p>6 A. Uh-huh.</p> <p>7 Q. When did you purchase that car?</p> <p>8 A. I believe around the same time, like</p> <p>9 maybe a few weeks later.</p> <p>10 Q. A few --</p> <p>11 A. A few weeks following the motor vehicle</p> <p>12 collision of the S 580 I purchased the E 63 S.</p> <p>13 Q. Okay. So around March or April of '23?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay. And you -- did you sell that car?</p> <p>16 A. The E 63 S, yes, I ended up selling it.</p> <p>17 Q. And when was that?</p> <p>18 A. That I don't recall. I have it</p> <p>19 somewhere in -- I have it somewhere in my</p> <p>20 documents.</p> <p>21 Q. Do you remember what year?</p> <p>22 A. I've owned about three or four cars</p> <p>23 since. I -- I don't know the exact month. I would</p> <p>24 say it was sometime in 2024.</p>	<p style="text-align: right;">Page 40</p> <p>1 And, now, that car, the E 63 S, I will</p> <p>2 give you an exact date of purchase because when I</p> <p>3 purchased that vehicle, I purchased it directly</p> <p>4 from the dealer with a CO, so my recorded purchase</p> <p>5 date on that vehicle is when I registered the car,</p> <p>6 and I hadn't registered the car immediately --</p> <p>7 Q. Okay.</p> <p>8 A. -- because I had the certificate of</p> <p>9 origin for the vehicle. I just want to clarify</p> <p>10 that, as well.</p> <p>11 Q. Okay. And so you said that you stopped</p> <p>12 using voice technology in the E 63 S a few months</p> <p>13 after you bought it.</p> <p>14 Did you start using -- when did you</p> <p>15 start using it?</p> <p>16 A. I used it maybe the first few days, and</p> <p>17 that was it.</p> <p>18 Q. The first few days after you purchased</p> <p>19 it?</p> <p>20 A. Yeah. For maybe like a week and a half.</p> <p>21 Q. Okay. You mentioned the term "MBUX"</p> <p>22 earlier.</p> <p>23 Can you describe your understanding of</p> <p>24 what that is?</p>

VINCENZO ALLAN
FRESHOUR and ALLAN vs CERENCE

July 11, 2025
49-52

Page 49

1 A. So the S 580 I bought as a CPO vehicle
2 from an Ohio Mercedes dealer. Everything was
3 already activated by them for me.
4 So did I activate anything? No, but my
5 sales advisor told me, "Hey, this car, you can do
6 the same thing as your C 63, just, you know, this
7 one, all you have to -- just 'Hey Mercedes,' and it
8 will do whatever functions you want."
9 Q. Got it.
10 A. And let me follow up on that, since --
11 you know, my -- my other reason to believe is --
12 that the car was storing my voice information,
13 since the question was asked so many times, was
14 that, you know, I talk in a very different tone
15 when I'm not in a room like this, so it is very
16 hard to understand me because I talk very quick.
17 Mercedes under- -- the -- the car
18 understood me perfectly fine, which, you know, at
19 the time I didn't think anything of until, you
20 know, I did some Google searches.
21 Q. Okay. And when you say the car
22 understood you perfectly fine, are you referring to
23 the words that you were saying, like --
24 A. Yeah.

Page 50

1 Q. -- it was able to process those words?
2 A. Yeah.
3 Q. Okay. And is that -- was that the case
4 for all three of the vehicles?
5 A. I -- I just referenced the S 580.
6 Q. Okay. Did you -- did you find that the
7 C 63 S understood you perfectly fine?
8 A. Yeah, it did.
9 Q. Okay. And then how about the E 63 S?
10 A. The E 63 S, you know, I wouldn't be able
11 to tell you whether or not it completely understood
12 me as I stopped using the service.
13 Q. Right. So during the time that you did
14 use the service, did you find that it understood
15 the words that you were saying?
16 A. I would say it understood the words that
17 I was saying.
18 Q. Okay, okay. So going back to the S 580,
19 you said that the sales advisor set that up for
20 you, as well, right?
21 A. Uh-huh.
22 Q. And did that advisor ask you for any
23 information when he or she was enrolling you?
24 A. Once again, they are selling me a

Page 51

1 vehicle. They have my first name, my last name and
2 my e-mail address. It was an out-of-state
3 purchase, so yeah, they already had my information.
4 I don't believe they asked me for my information if
5 they already had it.
6 Q. Okay. So to your knowledge, did they
7 only input your name -- your first name, your last
8 name and your e-mail address when they enrolled you
9 in the voice technology?
10 A. To my knowledge, I believe so.
11 Q. Okay. When you started using it in the
12 S 580, did you similarly press the button with the
13 face?
14 A. No.
15 Q. Okay.
16 A. "Hey Mercedes."
17 Q. Okay. So can you clarify what you mean?
18 A. Yeah. "Hey Mercedes," you don't need --
19 I never had to press a button. The car would even
20 greet you when you walked in.
21 Q. So backing up a little bit, so you would
22 say, "Hey Mercedes," and you could say the command
23 and the car would execute the command?
24 A. Sure, okay, so, "Hey Mercedes," input

Page 52

1 command.
2 Q. Okay. Got it. Was there any other
3 phrase that you had to say to activate it?
4 A. No, just "Hey Mercedes" and follow with
5 a command.
6 Q. Okay. Did you ever say something like
7 "Load my personal profile"?
8 A. Did I ever say "Load my personal
9 profile"? No. Why would I -- no.
10 Q. I'm just trying to understand what your
11 experience was using the technology in the car.
12 Okay. And then you also said that the
13 car greets you when you -- I don't -- actually,
14 I'll just let you -- can you explain what you meant
15 by the car greets you and what that experience was
16 like?
17 A. Sure, yeah. You get in the car, the
18 little iPad screen says "Hello" with your name on
19 it.
20 Q. And did that happen in -- once you
21 opened the door or when you -- like what -- what
22 happened to trigger that?
23 A. Yeah, I mean, if your key is with you
24 and you open the door and you sit in the vehicle, I

VINCENZO ALLAN
FRESHOUR and ALLAN vs CERENCE

July 11, 2025

61-64

<p style="text-align: right;">Page 61</p> <p>1 A. Yeah, that's all.</p> <p>2 Q. Okay, okay. I'm going to show you</p> <p>3 another document we can mark as Exhibit 2.</p> <p>4 (WHEREUPON, a certain document was</p> <p>5 marked Allan Deposition Exhibit No.</p> <p>6 2, for identification.)</p> <p>7 BY MS. KEELEY:</p> <p>8 Q. Do you recognize this document?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Okay. Have you seen it before?</p> <p>11 A. Yes, I have.</p> <p>12 Q. Okay. Did you have a part in preparing</p> <p>13 anything in this document?</p> <p>14 A. Can you clarify that?</p> <p>15 Q. Sure. I'll back up.</p> <p>16 So at the top, like it says -- the top</p> <p>17 heading says, "Corrected Third Amended Class Action</p> <p>18 Complaint."</p> <p>19 Do you see that? About halfway down the</p> <p>20 page.</p> <p>21 A. Yes, I see that.</p> <p>22 Q. Did you par- -- did you help draft</p> <p>23 anything in this document?</p> <p>24 A. My attorneys drafted this on my behalf</p>	<p style="text-align: right;">Page 63</p> <p>1 2022 Mercedes-Benz S 580 purchased in or about</p> <p>2 March of 2022, and a 2023 Mercedes-Benz E 63 S</p> <p>3 purchased in or about May 2023."</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes, you did.</p> <p>6 Q. Okay. And those are the three vehicles</p> <p>7 we were talking about earlier, right?</p> <p>8 A. Yes, they are.</p> <p>9 Q. So for the next paragraph, 53, it says,</p> <p>10 "After each of the above-mentioned purchases,</p> <p>11 Plaintiff Allan returned to his home in Illinois</p> <p>12 and was prompted by the automobile's operating</p> <p>13 system to make a personal profile with the MBUX</p> <p>14 voice assistant system powered by Cerence Drive."</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes, you did.</p> <p>17 Q. Okay. And is -- is that -- is that your</p> <p>18 understanding of what happened?</p> <p>19 A. So -- so here the accounts were made on</p> <p>20 my behalf by the dealerships. When I took the cars</p> <p>21 home, I was prompted to put in my information, as</p> <p>22 well, into the actual vehicle to hit "sign in."</p> <p>23 Q. Oh, okay. Was that for each -- each of</p> <p>24 the three vehicles?</p>
<p style="text-align: right;">Page 62</p> <p>1 with information that I provided them.</p> <p>2 Q. Okay. Did you review it before they</p> <p>3 filed it?</p> <p>4 A. Yes, I did.</p> <p>5 Q. And did you -- did you give them your</p> <p>6 approval --</p> <p>7 A. Yes.</p> <p>8 Q. -- of what's -- of what's in it before</p> <p>9 it was filed?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. Okay, great. Can you turn to Page 14?</p> <p>12 Okay. So I just want to walk you</p> <p>13 through some of the allegations in the complaint to</p> <p>14 clarify your understanding of them, so I'll start</p> <p>15 with -- do you see where it starts with Paragraph</p> <p>16 No. 52?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So it says, "During the time</p> <p>19 period relevant to this action, Plaintiff Vincenzo</p> <p>20 Allan has owned several Mercedes-Benz automobiles</p> <p>21 integrated with MBUX and voice assistant technology</p> <p>22 powered by Cerence's voice recognition and SSE</p> <p>23 capability, including a 2020 Mercedes-Benz AMG</p> <p>24 C 63 S purchased in or about November of 2019, a</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Yeah.</p> <p>2 Q. Okay. So since we didn't --</p> <p>3 A. And that's clarification for your</p> <p>4 previous question.</p> <p>5 Q. Okay, great. That's fine. So let's</p> <p>6 back up, then.</p> <p>7 So -- so after you purchased the C 63 S,</p> <p>8 you said you went home and prompted -- were</p> <p>9 prompted to put in your own information.</p> <p>10 What information were you prompted to</p> <p>11 put in?</p> <p>12 A. The same information that the dealership</p> <p>13 put in.</p> <p>14 Q. Okay. So the first name, last name,</p> <p>15 e-mail address?</p> <p>16 A. Yes.</p> <p>17 So, now, when you purchase these cars,</p> <p>18 you know, the client advisors set up an account for</p> <p>19 you, and, I mean, it's not just -- almost every</p> <p>20 automaker does this, Range Rover, Cadillac, all of</p> <p>21 them. They ask you for your first name, your last</p> <p>22 name and your e-mail address. They set you up an</p> <p>23 account online. When the car gets delivered to</p> <p>24 you, all you have to do is sign in with your -- the</p>

EXHIBIT 11
CONFIDENTIAL
FILED UNDER SEAL

EXHIBIT 12

CARLA A. PEAK
RANDOLPH FRESHOUR vs CERENCE INC.

November 21, 2025

1-4

Page 1	Page 3
<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE NORTHERN DISTRICT OF ILLINOIS 3 EASTERN DIVISION</p> <p>-----</p> <p>4 RANDOLPH FRESHOUR and 5 VINCENZO ALLAN, each individually and 6 on behalf of similarly situated individuals,</p> <p>7 Plaintiffs, Case No. 8 1:23-cv-02667</p> <p>9 v.</p> <p>10 CERENCE INC., a Delaware corporation,</p> <p>11 Defendant.</p> <p>-----</p> <p>12 REMOTE VIDEOTAPED DEPOSITION 13 OF 14 CARLA A. PEAK 15 NOVEMBER 21, 2025</p> <p>16 17 18 19 20 21 22 23 24 Reported Stenographically By: 25 Amy L. Larson, RPR, CSR, CCR Job No. 13787319</p>	<p>1 A P P E A R A N C E S:</p> <p>2 ON BEHALF OF THE PLAINTIFF AND DEPONENT:</p> <p>3 MCGUIRE LAW, P.C. 4 55 West Wacker Drive, 9th Floor 5 Chicago, IL 60601 6 BY: PAUL GESKE, ESQ. 7 email: pgeske@mcgpc.com 8 BY: ETHAN CONIGLIO, ESQ. 9 email: econiglio@mcgpc.com 10 OBSERVER ON BEHALF OF KROLL, LLC: 11 KROLL, LLC 12 1 World Trade Center, 31st Floor 13 New York, NY 10007 14 BY: GABRIEL BRUNSWICK, ESQ. 15 email: gabriel.brunswick@kroll.com 16 ON BEHALF OF THE DEFENDANT: 17 SHOOK, HARDY & BACON L.L.P. 18 111 South Wacker Drive, Suite 4700 19 Chicago, IL 60606 20 BY: MATTHEW WOLFE, ESQ. 21 email: mwolfe@shb.com 22 BY: SAMUEL BERNSTEIN, ESQ. 23 email: sbernstein@shb.com</p> <p>24 25 ALSO PRESENT: Mark Von Lanken, Videographer</p>
Page 2	Page 4
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>November 21, 2025</p> <p>11:05 a.m. EST</p> <p>Remote Videotaped Deposition of CARLA A. PEAK, taken before Amy L. Larson, a Registered Professional Reporter, Certified Court Reporter in the State of Utah, Notary Public in the State of Minnesota, Notary Public in the State of Wisconsin, Certified Shorthand Reporter in the State of Illinois, Certified Court Reporter in the State of Washington, Certified Shorthand Reporter in the State of Oregon, and Certified Court Reporter in the State of New Mexico.</p>	<p>1 INDEX:</p> <p>2 EXAMINATION BY: PAGE</p> <p>3 Mr. Wolfe 6</p> <p>4 Mr. Geske 105</p> <p>5 EXHIBITS MARKED FOR IDENTIFICATION:</p> <p>6 Exhibit 1 10</p> <p>7 Curriculum Vitae</p> <p>8 Exhibit 2 52</p> <p>9 Supplemental Declaration</p> <p>10 Exhibit 3 55</p> <p>11 Declaration</p> <p>12 Exhibit 4 66</p> <p>13 Bates MBUSA_0077 - MBUSA_0078</p> <p>14 Exhibit 5 89</p> <p>15 Corrected Third Amended Class</p> <p>16 Action Complaint</p> <p>17 18 19 20 21 22 23 24 25</p>

CARLA A. PEAK
RANDOLPH FRESHOUR vs CERENCE INC.

November 21, 2025
41-44

<p style="text-align: right;">Page 41</p> <p>1 offered as a class certification expert by</p> <p>2 the plaintiffs in this case?</p> <p>3 A. No.</p> <p>4 Q. What is your role in this case?</p> <p>5 A. My role in this case is simply to provide a</p> <p>6 declaration stating that if a class is</p> <p>7 certified, this is typically the method of</p> <p>8 dissemination that is used and that has been</p> <p>9 approved by other courts.</p> <p>10 Q. Do you have an opinion about whether the</p> <p>11 identities of individual class members in</p> <p>12 this case are readily ascertainable?</p> <p>13 MR. GESKE: Objection to the</p> <p>14 extent it calls for a legal conclusion.</p> <p>15 You can answer.</p> <p>16 THE WITNESS: I have no opinion on</p> <p>17 ascertainability.</p> <p>18 BY MR. WOLFE:</p> <p>19 Q. Do you have any views on that issue?</p> <p>20 A. I do not.</p> <p>21 MR. GESKE: Same objection.</p> <p>22 Sorry. Sorry, Carla.</p> <p>23 Same objection.</p> <p>24 BY MR. WOLFE:</p> <p>25 Q. Do you have any opinion or views on whether</p>	<p style="text-align: right;">Page 43</p> <p>1 THE WITNESS: No, I am not.</p> <p>2 BY MR. WOLFE:</p> <p>3 Q. Do you have any personal firsthand knowledge</p> <p>4 about this case?</p> <p>5 A. No, I do not.</p> <p>6 Q. Do you own a car?</p> <p>7 A. Yes.</p> <p>8 Q. What kind of car is it?</p> <p>9 A. A VW.</p> <p>10 Q. Does it have speech-command technology?</p> <p>11 A. I don't know. If it does, I don't use it.</p> <p>12 Q. Do you use any kind of speech-command</p> <p>13 technology, like Siri or Global Assist or</p> <p>14 anything like that?</p> <p>15 A. I typically don't, because I don't care to.</p> <p>16 Q. Have you ever used speech-command technology</p> <p>17 in a car?</p> <p>18 A. Yes.</p> <p>19 Q. Tell me about the circumstances of that.</p> <p>20 A. My husband got a new car and we just, like,</p> <p>21 tested it out.</p> <p>22 Q. What kind of car does he have?</p> <p>23 A. It's a BMW.</p> <p>24 Q. So do you remember what you said to the</p> <p>25 speech-recognition technology?</p>
<p style="text-align: right;">Page 42</p> <p>1 any individual's status as a class member can</p> <p>2 be objectively determined?</p> <p>3 MR. GESKE: Same objection.</p> <p>4 THE WITNESS: Can you rephrase?</p> <p>5 BY MR. WOLFE:</p> <p>6 Q. Do you have any opinion or views on whether</p> <p>7 any individual's status as a class member can</p> <p>8 be objectively determined?</p> <p>9 MR. GESKE: Same objection.</p> <p>10 THE WITNESS: By whom?</p> <p>11 BY MR. WOLFE:</p> <p>12 Q. By a court.</p> <p>13 MR. GESKE: Same objection.</p> <p>14 THE WITNESS: I don't have an</p> <p>15 opinion.</p> <p>16 BY MR. WOLFE:</p> <p>17 Q. That's not within the scope of what you are</p> <p>18 doing in this case?</p> <p>19 A. Correct.</p> <p>20 Q. Are you offering any opinions on whether the</p> <p>21 technology at issue in this case involves</p> <p>22 biometrics?</p> <p>23 MR. GESKE: Object to the extent</p> <p>24 it calls for a legal conclusion.</p> <p>25 You can answer.</p>	<p style="text-align: right;">Page 44</p> <p>1 A. I know it started with, "Hey BMW."</p> <p>2 Q. So he was asking you to test out the actual</p> <p>3 technology that came up on the BMW; is that</p> <p>4 right?</p> <p>5 A. I wouldn't say he was asking me to test it</p> <p>6 out. I think he was just saying, "Hey, try</p> <p>7 this."</p> <p>8 Q. Yeah, I got you.</p> <p>9 Do you -- do you know if you also can</p> <p>10 pair a phone with the car and use the</p> <p>11 speech-recognition technology on the phone</p> <p>12 while you're in your car?</p> <p>13 A. I know you can pair a phone with the car,</p> <p>14 so -- but I've never tried.</p> <p>15 Q. Okay. Have you ever seen people do that?</p> <p>16 A. Yes.</p> <p>17 Q. Tell me how that works, from your point of</p> <p>18 view.</p> <p>19 MR. GESKE: Objection; foundation,</p> <p>20 calls for speculation.</p> <p>21 THE WITNESS: My husband uses it.</p> <p>22 He likes that sort of thing.</p> <p>23 BY MR. WOLFE:</p> <p>24 Q. It's not a technical question. I'm just</p> <p>25 asking if you observe somebody using, say,</p>

CARLA A. PEAK
RANDOLPH FRESHOUR vs CERENCE INC.November 21, 2025
61-64

<p style="text-align: right;">Page 61</p> <p>1 Q. In paragraph 7 there's a list of automotive 2 cases. 3 Do you see that? 4 A. Yes. 5 Q. Were these also in the classes? 6 A. No. 7 Q. Which ones were not settlement classes? 8 A. I believe Soders vs. General Motors started 9 as a certification class and later settled 10 and became a settlement class. 11 And at least one of the Nissans, that 12 floorboard one. I'm just -- I can't recall 13 which one it was, but that one also started 14 as a class certification. 15 Q. Did the cases in paragraph 7 all involve a 16 defect with a car, like a rusty floorboard or 17 some kind of a part that didn't work 18 properly? 19 A. Not Soders vs. General Motors. 20 Q. The others all did? 21 A. I believe so. 22 Q. What was Soders about? 23 A. If I recall correctly, I believe it was about 24 the pricing, the sticker on -- there was like 25 a charge that was at issue.</p>	<p style="text-align: right;">Page 63</p> <p>1 with them; is that fair? 2 A. Yes, I think that's accurate. We'll say 3 alleged problem. 4 Q. I can tell that you have a lot of experience 5 talking to lawyers. 6 A. There's no liability admitted in a 7 settlement. 8 Q. Let's go to paragraph 13. 9 A. Okay. 10 Q. In paragraph 13 there's a class definition. 11 Do you see that? 12 A. I do. 13 Q. How did you get an understanding about what 14 the class definition is? 15 A. I believe that came from the class action 16 Complaint. 17 Q. Have you ever seen either of the motions for 18 class certification filed in these cases? 19 A. I don't recall. 20 MR. WOLFE: Okay. Let's take, 21 like, a ten-minute break. 22 THE WITNESS: Okay. 23 MR. WOLFE: I maybe have another 24 hour, hour and a half, that should be it. 25 THE VIDEOGRAPHER: We are off the</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. So some sort of overpricing or consumer fraud 2 theory about a hidden charge or something 3 like that? 4 A. Yes, I believe so. 5 Q. And in the cases in paragraph 7, were the 6 owners of the vehicles the class members? 7 A. I believe it was -- in most of them it was 8 like current and former owners and current 9 and former lessees. 10 Q. So in trying to put it in plain English, it 11 would be people whose bought or leased a car 12 and there was something wrong with the car 13 which made the car less usable or less value 14 so they were getting money compensation 15 because there were problems the car? 16 A. Not -- not necessarily. 17 Q. Okay. 18 A. I don't know that they all provided financial 19 compensation, you know, outside of repairs or 20 things. 21 Q. Okay. Thank you for that clarification. 22 That's a good clarification. 23 So but each of these cases in 24 paragraph 7 involved owners or lessors of 25 cars and the cars themselves had a problem</p>	<p style="text-align: right;">Page 64</p> <p>1 record. The time is 12:28. 2 (Recess.) 3 THE VIDEOGRAPHER: We are on the 4 record the time is 12:43. 5 MR. WOLFE: Ms. Peak, we're going 6 to continue with your declaration in a 7 moment. 8 I just -- I wanted to clarify for the 9 record, I don't think I did a very good job, 10 I previously sent Ms. Peak two exhibits, and 11 the first one is her CV, that will be 12 Exhibit 1. The second one is her 13 supplemental declaration. That will be 14 Exhibit 2. This declaration will be 15 Exhibit 3. And I'll submit them to Esquire 16 as well after the deposition. 17 BY MR. WOLFE: 18 Q. Ms. Peak, do you still have your declaration 19 in front of you? 20 A. Yes. 21 Q. I want to go to paragraph 15, all right? 22 A. Yes. 23 Q. Starting in the first sentence of paragraph 24 15, it says, "I understand from consultation 25 with counsel that Mercedes-Benz USA has</p>

CARLA A. PEAK
 RANDOLPH FRESHOUR vs CERENCE INC.

November 21, 2025
 73-76

<p style="text-align: right;">Page 73</p> <p>1 confirmation for myself. I believed it to be</p> <p>2 true and wanted that confirmation. And he</p> <p>3 gave me that confirmation.</p> <p>4 Q. And did you ask him about a specific vendor</p> <p>5 that can do it?</p> <p>6 A. I don't recall if I specifically said</p> <p>7 IH Market -- IHS Market.</p> <p>8 Q. Did he give you any specific vendor that can</p> <p>9 do it?</p> <p>10 A. I don't recall him responding that he -- with</p> <p>11 a specific vendor, no.</p> <p>12 Q. And you've not done this personally, right?</p> <p>13 A. No.</p> <p>14 Q. Are you an expert on identifying the people</p> <p>15 who should receive notice?</p> <p>16 MR. GESKE: Object to the form and</p> <p>17 calls for a legal conclusion.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: Can you rephrase?</p> <p>20 BY MR. WOLFE:</p> <p>21 Q. Are you an expert on figuring out who should</p> <p>22 get notice of a class action?</p> <p>23 A. Depending on the method.</p> <p>24 Q. What do you mean by that?</p> <p>25 A. Well, what I mean is sometimes the defendant</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. You cite a number of cases in this</p> <p>2 declaration. Which ones do you think are</p> <p>3 most analogous to this case?</p> <p>4 MR. GESKE: Object to the form.</p> <p>5 You can answer if you understand the</p> <p>6 question.</p> <p>7 THE WITNESS: Based on the</p> <p>8 information available to me at this point in</p> <p>9 time, not knowing one way or another whether</p> <p>10 Cerence has information about actually who is</p> <p>11 in the class and who is not, this is</p> <p>12 typically how cases -- how notice is provided</p> <p>13 in automotive situations where the numbers</p> <p>14 are available and, therefore, I think it</p> <p>15 would be very similar, based on the</p> <p>16 information available at this time, to the</p> <p>17 cases that I list in number 7 with the</p> <p>18 exception perhaps of Soders --</p> <p>19 Soders vs. General Motors, which is slightly</p> <p>20 different.</p> <p>21 BY MR. WOLFE:</p> <p>22 Q. Is it your understanding that the allegation</p> <p>23 in this case is that the speech recognition</p> <p>24 software didn't work the way it was supposed</p> <p>25 to?</p>
<p style="text-align: right;">Page 74</p> <p>1 has specific information saying this is</p> <p>2 who -- this is a class member. Based on our</p> <p>3 records, we know for sure this is a class</p> <p>4 member. Sometimes there is no information</p> <p>5 based on who specifically is a class member</p> <p>6 and so we have to devise a plan to provide</p> <p>7 notice to potential and/or likely class</p> <p>8 members.</p> <p>9 Q. Are you aware of Cerence, the defendant in</p> <p>10 this case, having a list or specific</p> <p>11 information about what individuals should be</p> <p>12 class members?</p> <p>13 A. No, I'm not.</p> <p>14 Q. Do you have any reason to think it does?</p> <p>15 A. I don't have a reason to think one way or the</p> <p>16 other, no.</p> <p>17 Q. That isn't something you'd want to know when</p> <p>18 you're making recommendations about how to</p> <p>19 make a notice plan?</p> <p>20 A. It is, but I'm not making a notice plan.</p> <p>21 Q. This declaration is not meant to explain how</p> <p>22 notice could be achieved in this case?</p> <p>23 A. This declaration is how notice is typically</p> <p>24 achieved in other cases, but it is not</p> <p>25 100 percent specific to this case.</p>	<p style="text-align: right;">Page 76</p> <p>1 A. No, it is not.</p> <p>2 Q. What's your understanding of what the</p> <p>3 plaintiffs allege Cerence did wrong?</p> <p>4 A. My understanding is alleged violation of</p> <p>5 BIPA.</p> <p>6 Q. Is it your understanding that the plaintiffs</p> <p>7 said Cerence collected, possessed, maybe did</p> <p>8 other things with their biometric data</p> <p>9 without obtaining consent or making proper</p> <p>10 disclosures under BIPA?</p> <p>11 A. Yes.</p> <p>12 Q. If a person owned a Mercedes vehicle and</p> <p>13 never used the voice technology on the</p> <p>14 vehicle, would they have a claim against</p> <p>15 Cerence?</p> <p>16 MR. GESKE: Objection; foundation,</p> <p>17 calls for speculation, calls for a legal</p> <p>18 conclusion.</p> <p>19 You can answer if you understand the</p> <p>20 question.</p> <p>21 THE WITNESS: I mean, I don't have</p> <p>22 an opinion on that. That's not what the</p> <p>23 class -- it's my understanding that is not</p> <p>24 specifically what the class certification --</p> <p>25 a motion for class certification would be</p>

CARLA A. PEAK
 RANDOLPH FRESHOUR vs CERENCE INC.

November 21, 2025
 81-84

<p style="text-align: right;">Page 81</p> <p>1 vehicles, as well as the addresses the</p> <p>2 current/former owners and lessees.</p> <p>3 Q. And your understanding is if a third-party</p> <p>4 vendor could give it to you, they won't do it</p> <p>5 with a court order?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know why?</p> <p>8 A. Specifically?</p> <p>9 Q. Yeah.</p> <p>10 A. I don't know specifically why, but I</p> <p>11 understand the logic behind it.</p> <p>12 Q. What's your understanding?</p> <p>13 A. Well, I mean, some information is not</p> <p>14 publicly available, and my understanding is</p> <p>15 this information is not publicly available</p> <p>16 and, therefore, a court would need to order</p> <p>17 it to be provided to us.</p> <p>18 Q. Do you know if IHS Market can supply VINs of</p> <p>19 the model, year and make at issue?</p> <p>20 A. My understanding is, is they can do something</p> <p>21 like that. Specifically this make and model,</p> <p>22 I have not confirmed, no.</p> <p>23 Q. And your understanding isn't based on</p> <p>24 personal experience, it's based on general</p> <p>25 understanding from working on other cases</p>	<p style="text-align: right;">Page 83</p> <p>1 vehicles at issue in this litigation during</p> <p>2 the class period."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. How would you do that?</p> <p>6 A. I would not specifically do that.</p> <p>7 Q. Who would?</p> <p>8 A. Our data team.</p> <p>9 Q. Do you know how the data team would do it?</p> <p>10 A. Not specifically.</p> <p>11 Q. Do you have any idea of how they do it?</p> <p>12 A. I would say based on the information</p> <p>13 available to them, but I don't know the</p> <p>14 specific procedure for doing so.</p> <p>15 Q. In paragraph 18 you say, "Should the matter</p> <p>16 proceed to the class notice phase upon</p> <p>17 completion of the above-referenced look-up</p> <p>18 processes, the notice phase would be analyzed</p> <p>19 for completeness."</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. How would you do that?</p> <p>23 A. I would not specifically do that.</p> <p>24 Q. Who would do it?</p> <p>25 A. Our data team.</p>
<p style="text-align: right;">Page 82</p> <p>1 where other people did the work?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know if IHS Market can supply data</p> <p>4 showing which vehicles were registered in</p> <p>5 Illinois?</p> <p>6 A. My understanding is that they can.</p> <p>7 Q. And is that also based on other -- other</p> <p>8 people doing that in cases that you've worked</p> <p>9 on?</p> <p>10 A. Yes.</p> <p>11 Q. Do you think IHS Market can supply mailing</p> <p>12 address data for the relevant vehicle owners</p> <p>13 and lessors?</p> <p>14 A. That is my understanding, yes.</p> <p>15 Q. And that's also not based on your personal</p> <p>16 experience, it's based on other people doing</p> <p>17 the work and you being aware of it?</p> <p>18 A. Correct.</p> <p>19 Q. Do you know where IHS Market gets this data?</p> <p>20 A. Not specifically.</p> <p>21 Q. Do you know whether the data is reliable?</p> <p>22 A. No, not specifically.</p> <p>23 Q. At the end of the paragraph 17 you say, "The</p> <p>24 information would be refined to individuals</p> <p>25 in Illinois who owned or leased one of the</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Do you know how they would do it?</p> <p>2 A. I know generally what they look for.</p> <p>3 Q. What do they look for?</p> <p>4 A. They would look to ensure that there were</p> <p>5 mailing addresses and city was listed, state</p> <p>6 was listed, ZIP code was listed, to make sure</p> <p>7 that those addresses were complete and</p> <p>8 mailable.</p> <p>9 Q. That's what you mean by completeness, making</p> <p>10 sure that the addresses appear to be</p> <p>11 complete?</p> <p>12 A. They would also look to see which VIN numbers</p> <p>13 do not have any names and addresses</p> <p>14 associated with them.</p> <p>15 Q. In paragraph 19 you talk about additional</p> <p>16 notification methods.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. How did Kroll determine whether additional</p> <p>20 notification methods are needed?</p> <p>21 A. When the notice list is analyzed, it was</p> <p>22 looked for completeness, so it would tell</p> <p>23 us -- we would have an understanding of how</p> <p>24 many VIN numbers do not have any names and</p> <p>25 addresses associated with them and,</p>

CARLA A. PEAK
RANDOLPH FRESHOUR vs CERENCE INC.November 21, 2025
85-88

<p style="text-align: right;">Page 85</p> <p>1 therefore, would not be getting any type of</p> <p>2 notice about the litigation.</p> <p>3 We would also be looking at, when we</p> <p>4 mail, how many are coming back as</p> <p>5 undeliverable, if any, and how many re-mails</p> <p>6 are available.</p> <p>7 So we would use this information</p> <p>8 based off of the class size, and then if it</p> <p>9 falls below 70 percent, which is the FJC</p> <p>10 recommended standard, then we would add other</p> <p>11 methods of notification to ensure that that</p> <p>12 threshold was met.</p> <p>13 Q. What other methods of notification would you</p> <p>14 use?</p> <p>15 A. Typically, we would employ media notice.</p> <p>16 Q. What do you mean by that?</p> <p>17 A. So we would use the advertising software that</p> <p>18 we have available to us to analyze the type</p> <p>19 of individual, any type of information we can</p> <p>20 about the individuals who likely owned one of</p> <p>21 these vehicles. It's the same information</p> <p>22 that marketers use when they are trying to</p> <p>23 sell products to people and reach the right</p> <p>24 people so they're not wasting any ad spend.</p> <p>25 And so we would analyze that and say,</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. Have you done any testing of your notice plan</p> <p>2 for this case?</p> <p>3 A. We haven't developed a notice plan for this</p> <p>4 case yet.</p> <p>5 Q. Have you done any testing of your notice plan</p> <p>6 that you describe in this declaration?</p> <p>7 A. Can you elaborate on what you mean by</p> <p>8 "testing," please?</p> <p>9 Q. Let me back up.</p> <p>10 Before you roll out notice plans in</p> <p>11 class actions, do you ever test them with</p> <p>12 subsets or focus groups or do anything to</p> <p>13 understand their reach before you roll them</p> <p>14 out?</p> <p>15 A. No, not typically.</p> <p>16 Q. Have you ever done that?</p> <p>17 A. I believe we did do it -- it wasn't a class</p> <p>18 action case, but a government case back in</p> <p>19 the day.</p> <p>20 Q. Is it fair to say that a proposal in your</p> <p>21 declaration is dependent on IHS Market being</p> <p>22 able to provide you with the data referenced</p> <p>23 in paragraph 17?</p> <p>24 A. The notice plan in the declaration is just a</p> <p>25 sample. The notice plan that any</p>
<p style="text-align: right;">Page 86</p> <p>1 Okay, who is likely purchaser of a Mercedes,</p> <p>2 and if we can get down as far as this</p> <p>3 particular make and model, we would go -- you</p> <p>4 know, we would delve that deep, if possible,</p> <p>5 and create the proxy audience, which is more</p> <p>6 or less a sample audience or a likely</p> <p>7 audience of people who likely purchased one</p> <p>8 of these vehicles.</p> <p>9 And then we would devise an</p> <p>10 advertising campaign to reach them. That</p> <p>11 advertising campaign might consist of digital</p> <p>12 notices, social media notices, press release,</p> <p>13 publications, whatever fits this particular</p> <p>14 demographic, and usage consumption habits.</p> <p>15 Q. Is there anything about the class proposed in</p> <p>16 this case that would inform your media notice</p> <p>17 methodology?</p> <p>18 A. In this particular instance, we would look</p> <p>19 for people who likely purchased the vehicles</p> <p>20 that possibly had this software installed on</p> <p>21 them or this -- forgive me if I'm not using</p> <p>22 the right term as software, but voice</p> <p>23 software.</p> <p>24 Q. I think voice software is fair.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 88</p> <p>1 administrator would devise for this case if</p> <p>2 it's certified would be subject to a lot of</p> <p>3 different information.</p> <p>4 Q. My question is a little bit different.</p> <p>5 A. Okay.</p> <p>6 Q. My question is -- I'll try to ask it a</p> <p>7 different way.</p> <p>8 If IHS Market can't give you the</p> <p>9 VINs, registration data, mailing, address</p> <p>10 data and other information in paragraph 17,</p> <p>11 is your notice plan achievable?</p> <p>12 A. So a notice plan hasn't been developed yet.</p> <p>13 Q. So you don't have a notice plan for this</p> <p>14 case?</p> <p>15 A. No, it hasn't been developed yet, because a</p> <p>16 class has not been certified.</p> <p>17 Q. So your declaration is limited to what is</p> <p>18 typically done in automotive cases; is that</p> <p>19 fair?</p> <p>20 A. Yes.</p> <p>21 Q. There are no BIPA cases identified in this</p> <p>22 declaration, right?</p> <p>23 A. No, not that I'm aware of.</p> <p>24 Q. Paragraphs 18 to 30 of your declaration, are</p> <p>25 those -- is that material material that you</p>

CARLA A. PEAK
 RANDOLPH FRESHOUR vs CERENCE INC.

November 21, 2025
 89-92

<p style="text-align: right;">Page 89</p> <p>1 reuse in many declarations?</p> <p>2 A. Yes.</p> <p>3 Q. Is there anything unique to this case in</p> <p>4 those paragraphs?</p> <p>5 A. No.</p> <p>6 MR. WOLFE: Let's take a</p> <p>7 ten-minute break. I'm almost done, but I</p> <p>8 think I need to get another exhibit and then</p> <p>9 there will be maybe 20 more minutes.</p> <p>10 THE WITNESS: Okay.</p> <p>11 THE VIDEOGRAPHER: We are off the</p> <p>12 record. The time is 1:19.</p> <p>13 (Recess.)</p> <p>14 THE VIDEOGRAPHER: We are on the</p> <p>15 record. The time is 1:31.</p> <p>16 BY MR. WOLFE:</p> <p>17 Q. Ms. Peak, I think you told me earlier that</p> <p>18 you have reviewed the Complaint in this case;</p> <p>19 is that right?</p> <p>20 A. I believe so, yes.</p> <p>21 Q. Okay. We're going to send you another</p> <p>22 exhibit.</p> <p>23 MR. WOLFE: Sam, can you send it.</p> <p>24 (Exhibit 5 marked.)</p> <p>25 MR. BERNSTEIN: Just sent.</p>	<p style="text-align: right;">Page 91</p> <p>1 the drivers and passengers of those vehicles</p> <p>2 that it is collecting, capturing, storing and</p> <p>3 disseminating their voiceprint biometrics."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Are drivers and passengers the same things as</p> <p>7 owners and lessors necessarily?</p> <p>8 A. No, not into my opinion.</p> <p>9 Q. Have you considered notice methods for</p> <p>10 drivers and passengers of vehicles as part of</p> <p>11 your work on this?</p> <p>12 A. So with this initial -- with this</p> <p>13 information, this to me would say that we</p> <p>14 would need to include an additional layer to</p> <p>15 reach those passengers of those vehicles.</p> <p>16 Q. Have you ever thought about that before today</p> <p>17 in connection with --</p> <p>18 A. Well, I haven't developed a notice plan, so</p> <p>19 no.</p> <p>20 Q. You did not consider that in connection with</p> <p>21 this case before today?</p> <p>22 A. No, because I was not developing a notice</p> <p>23 plan for this case.</p> <p>24 Q. What do you mean by an additional layer?</p> <p>25 What would you do?</p>
<p style="text-align: right;">Page 90</p> <p>1 THE WITNESS: Okay, opening it up.</p> <p>2 MR. WOLFE: This will be</p> <p>3 Exhibit 5.</p> <p>4 THE WITNESS: Okay.</p> <p>5 BY MR. WOLFE:</p> <p>6 Q. Ms. Peak, have you seen this document before?</p> <p>7 A. I would have to compare it to the one I did</p> <p>8 see. I'm not sure if I saw the corrected or</p> <p>9 Amended Class Action Complaint.</p> <p>10 Q. Okay. I'll represent to you this is the</p> <p>11 operative Complaint in the federal case.</p> <p>12 A. Okay.</p> <p>13 Q. Can you take a look at paragraph 1 for me?</p> <p>14 At the very end of the first page, going on</p> <p>15 to the second, it says, "Defendant's products</p> <p>16 use biometric-enabled systems to listen to</p> <p>17 drivers' and passengers' voices."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Can you go to page 11, please?</p> <p>21 A. Paragraph 11 or page 11?</p> <p>22 Q. Page 11, paragraph 41.</p> <p>23 A. Great. Thanks. Okay.</p> <p>24 Q. And there it says in the second line,</p> <p>25 "Cerence does not clearly inform or notify</p>	<p style="text-align: right;">Page 92</p> <p>1 A. So whenever we develop a media plan, we take</p> <p>2 into account all of the information available</p> <p>3 to us. So if we can provide direct notice,</p> <p>4 that is the preferred method under Rule 23.</p> <p>5 If we cannot provide direct notice, then we</p> <p>6 would have to supplement with other methods</p> <p>7 of notice, such as a media campaign.</p> <p>8 Q. So if you wanted to reach passengers in these</p> <p>9 Mercedes vehicles whose voice biometrics</p> <p>10 allegedly were captured by Cerence, you would</p> <p>11 do that through media notice?</p> <p>12 A. If these individuals were part of the class</p> <p>13 definition.</p> <p>14 Q. And the media notice would be effectively</p> <p>15 publication notice; is that right?</p> <p>16 A. Typically, it's digital-type notice.</p> <p>17 Q. Sure. Digital notice is the modern version</p> <p>18 of publication notice; is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. And what would it say?</p> <p>21 A. I -- that's not something I can decide or</p> <p>22 determine at this time, because a class has</p> <p>23 not been certified. I'm not creating a</p> <p>24 notice yet. I don't have all of the</p> <p>25 information available to me. It would be</p>

CARLA A. PEAK
RANDOLPH FRESHOUR vs CERENCE INC.November 21, 2025
93-96

Page 93

1 decided at the time when someone, at any
2 point if the class is certified, creates a
3 notification.
4 Q. As a class action notice expert, if you
5 wanted to get the attention of someone who,
6 as a nonowner of a Mercedes vehicle used this
7 technology, what would you do?
8 A. I'd have to do my research first before I
9 make a decision.
10 Q. As you sit here today, you can't tell me what
11 you'd do?
12 A. No, I'd have to research -- I'd have to do
13 research first.
14 Q. In a media notice situation where you are
15 trying to reach consumers and there's no
16 class list, how do you check to make sure
17 that claimants really are entitled to make a
18 claim, that they're not just making it up?
19 A. How do I tell if someone is -- can actually
20 make a qualified claim?
21 Q. Yeah.
22 A. I don't.
23 Q. Does anybody do that?
24 A. Typically, the settlement agreement sets
25 forth what needs to be done by the

Page 94

1 administrator to collect what information is
2 needed to collect for somebody to file a
3 claim, what sort of proof is required, you
4 know, if there's a deficiency process, and it
5 fully explains how to do that.
6 But -- but Kroll does not identify
7 class members, and I do not identify class
8 members.
9 Q. The parties work that out in the settlement
10 agreement and there's a process set out in
11 the settlement agreement?
12 A. The parties work out a process to determine
13 who gets paid.
14 Q. What if there's no settlement?
15 A. Then there's no money to pay anyone.
16 Q. What if there's a judgment?
17 A. Then a judge dictates that information.
18 Q. So let's -- in a consumer class action
19 scenario where you provide media notice and
20 people submit a claim, there's a claim form;
21 is that fair to say?
22 A. Typically, yes.
23 Q. And is information required on the claim form
24 to verify that somebody has a claim?
25 A. It depends what is required by the settlement

Page 95

1 agreement.
2 Q. In this case, what would you want to see on
3 the claim form to verify that somebody has a
4 claim?
5 A. It would be determined by what the settlement
6 agreement says, if this case were to settle,
7 or what a judgment by the court says.
8 Q. But you have no opinion on that?
9 A. I do not decide what gets put on the claim
10 form, no. I do not decide requirements for
11 proof of claim.
12 Q. Do you agree that a claim form would be
13 necessary in this case?
14 A. I have no opinion. There's no -- there's no
15 settlement, so there is no reason for a claim
16 form.
17 Q. If passengers are in the class, how do you
18 identify them without a claim form?
19 A. I don't --
20 MR. GESKE: Objection; calls --
21 sorry. Sorry, Carla.
22 Objection; calls for speculation,
23 lacks foundation.
24 THE WITNESS: Can you repeat the
25 question?

Page 96

1 BY MR. WOLFE:
2 Q. If passengers are in the class, how do you
3 identify them without a claim form?
4 MR. GESKE: Same objections.
5 THE WITNESS: I don't identify
6 class members.
7 BY MR. WOLFE:
8 Q. How would you handle an owner or lessor of a
9 Mercedes like you who wouldn't use the on-car
10 speech technology?
11 A. Can you --
12 MR. GESKE: Object to form.
13 You can answer.
14 THE WITNESS: Handle in what
15 regard?
16 BY MR. WOLFE:
17 Q. Would you want to see a claim form from them
18 to ensure that -- whether they used the
19 technology or not?
20 A. Again, I don't decide what proof needs to be
21 placed in a claim form and I don't decide who
22 gets paid.
23 Q. Are you ever involved in the design of claim
24 forms?
25 A. Yes.

CARLA A. PEAK
RANDOLPH FRESHOUR vs CERENCE INC.November 21, 2025
97-100

<p style="text-align: right;">Page 97</p> <p>1 Q. In what way?</p> <p>2 A. Reviewing settlement agreements and putting</p> <p>3 the requirements that the parties have</p> <p>4 stipulated into the claim form so we know</p> <p>5 what information is to be collected, as well</p> <p>6 as collecting the information that we as the</p> <p>7 administrator need to receive to facilitate</p> <p>8 payments.</p> <p>9 Q. What's some typical information that you put</p> <p>10 on the claim form?</p> <p>11 A. Name, address, phone number, email address,</p> <p>12 selection of payment method, signature.</p> <p>13 Q. How about confirmation that you used or</p> <p>14 bought or had an account or whatever the</p> <p>15 issue is of the case?</p> <p>16 MR. GESKE: Object to the form,</p> <p>17 compound.</p> <p>18 You can answer.</p> <p>19 MR. WOLFE: Bad question. I'll</p> <p>20 withdraw it. That was a terrible question.</p> <p>21 BY MR. WOLFE:</p> <p>22 Q. Have you ever seen claim forms that required</p> <p>23 a claimant to say something like, I bought</p> <p>24 this product during this time period?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 99</p> <p>1 Exhibit 3, the full declaration?</p> <p>2 A. Okay.</p> <p>3 Q. Turn to paragraph 13.</p> <p>4 A. Yes.</p> <p>5 Q. Do you see the proposed class definition</p> <p>6 there?</p> <p>7 A. Uh-huh.</p> <p>8 Q. In the first line it says, "Within Illinois."</p> <p>9 Do you have an understanding of why</p> <p>10 the class definition says, "Within Illinois"?</p> <p>11 A. I think that's for legal reasons because of</p> <p>12 the BIPA statute.</p> <p>13 Q. Is it fair to say that based on this</p> <p>14 definition, to be a member of the class you</p> <p>15 would have had to have done one of these</p> <p>16 things in Illinois?</p> <p>17 MR. GESKE: Objection; calls for a</p> <p>18 legal conclusion. The document speaks for</p> <p>19 itself.</p> <p>20 You can answer.</p> <p>21 THE WITNESS: I think -- yeah, I</p> <p>22 think that you would have to have been in --</p> <p>23 within Illinois during the class period and</p> <p>24 created -- and all three of those things --</p> <p>25 BY MR. WOLFE:</p>
<p style="text-align: right;">Page 98</p> <p>1 Q. Have you ever seen claim forms that required</p> <p>2 a claimant to say something like, I spent</p> <p>3 time to remedy this harm during this time</p> <p>4 period and I would like to get money back for</p> <p>5 remedying that harm?</p> <p>6 A. Yes.</p> <p>7 Q. And those claims are dependent on the</p> <p>8 claimants truthfully filling them out and</p> <p>9 signing them, right?</p> <p>10 A. Yes. I don't know if I can attest to whether</p> <p>11 they're doing it truthfully, but it is</p> <p>12 required of them to fill out the claim form</p> <p>13 and submit it and check all the boxes that</p> <p>14 say they're doing it truthfully.</p> <p>15 Q. Have you ever been involved in a process</p> <p>16 where there's a method to check whether the</p> <p>17 claimants are doing it truthfully, like a</p> <p>18 challenge process to the claim forms or</p> <p>19 something like that?</p> <p>20 A. Personally, no.</p> <p>21 Q. Is it your experience that that would be</p> <p>22 relatively atypical in a settlement</p> <p>23 situation?</p> <p>24 A. I don't know.</p> <p>25 Q. Can we go back to your declaration that was</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Have you ever --</p> <p>2 THE WITNESS: -- would have had to</p> <p>3 have been true.</p> <p>4 BY MR. WOLFE:</p> <p>5 Q. I'm sorry, I stepped on your answer a little.</p> <p>6 Were you finished?</p> <p>7 A. You would have had to be within Illinois at</p> <p>8 some point during the class period and all</p> <p>9 three of those would have had to be true.</p> <p>10 Q. Thank you for the clarification.</p> <p>11 Have you --</p> <p>12 A. That's my understanding. But, of course, you</p> <p>13 know, any time you draft notices and things,</p> <p>14 the parties will correct us if we are wrong,</p> <p>15 because I am not a lawyer. So if I interpret</p> <p>16 something incorrectly, the attorneys would</p> <p>17 correct me.</p> <p>18 Q. Have you ever been involved in designing a</p> <p>19 notice plan that requires class members to</p> <p>20 have been within a certain state in order to</p> <p>21 have a claim?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have any specific opinion in this case</p> <p>24 about how that should be done?</p> <p>25 A. How what should be done?</p>

CARLA A. PEAK
RANDOLPH FRESHOUR vs CERENCE INC.

November 21, 2025
101-104

<p style="text-align: right;">Page 101</p> <p>1 Q. Figuring out whether somebody was in Illinois</p> <p>2 when all three of those things happened.</p> <p>3 A. No, I do not.</p> <p>4 Q. In other cases you've worked on, how have you</p> <p>5 handled that issue, determining whether</p> <p>6 someone was in a certain state when they did</p> <p>7 whatever it was that led to a claim?</p> <p>8 A. So I don't determine that. I determine the</p> <p>9 best way to provide them with notice and help</p> <p>10 with the notice content, but I don't decide</p> <p>11 how to determine whether or not they were in</p> <p>12 that specific state when something occurred.</p> <p>13 Q. Do you agree that based on this class</p> <p>14 definition, there would have to be a</p> <p>15 determination made here that somebody was in</p> <p>16 Illinois when they did these three things?</p> <p>17 A. I don't think that that is something for me</p> <p>18 personally to determine.</p> <p>19 Q. Would notifying owners or lessors of vehicles</p> <p>20 registered in Illinois necessarily solve that</p> <p>21 problem?</p> <p>22 A. Solve the problem of?</p> <p>23 Q. Figuring out if they used the technology</p> <p>24 while they were in Illinois.</p> <p>25 A. No, we would not -- I don't believe we would</p>	<p style="text-align: right;">Page 103</p> <p>1 determination made that someone did these</p> <p>2 things during the time period defined?</p> <p>3 MR. GESKE: Objection; calls for a</p> <p>4 legal conclusion.</p> <p>5 You can answer.</p> <p>6 THE WITNESS: I would say it's not</p> <p>7 up to me to determine any of those things.</p> <p>8 BY MR. WOLFE:</p> <p>9 Q. I'm just asking you as an experienced class</p> <p>10 action notice person.</p> <p>11 When you see -- during the class</p> <p>12 period, do you think, Oh, we have to have</p> <p>13 something in the notice design to handle</p> <p>14 that?</p> <p>15 A. Saying all of that?</p> <p>16 Q. No, just identifying to people, You might</p> <p>17 have a claim if you did this at this time.</p> <p>18 Is the "at this time" thing something you'd</p> <p>19 expect to see in the notice plan?</p> <p>20 A. Yes.</p> <p>21 Q. And then the claimants would need to do</p> <p>22 something to verify, yes, I did that during</p> <p>23 the relevant time period, right?</p> <p>24 A. If that's what the parties agreed to.</p> <p>25 Q. Or if it was contested if that's what the</p>
<p style="text-align: right;">Page 102</p> <p>1 know if they used the technology when they</p> <p>2 were in Illinois. But, again, I wouldn't be</p> <p>3 able to tell, because it's not my job to</p> <p>4 identify class members.</p> <p>5 Q. And then later in the class definition, I</p> <p>6 think you pointed this out also, it says,</p> <p>7 "During the class period." So there's a</p> <p>8 timing element here too; is that fair?</p> <p>9 A. Yes.</p> <p>10 Q. Is that something you've seen before, that</p> <p>11 there's a timing element for someone to be a</p> <p>12 class member?</p> <p>13 A. Yes.</p> <p>14 Q. It's pretty typical, right?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have any specific opinion in this case</p> <p>17 about how to determine if someone meets the</p> <p>18 timing requirements to be a class member?</p> <p>19 A. I do not.</p> <p>20 Q. In other cases how have you handled this</p> <p>21 timing issue, requirement issue?</p> <p>22 A. I do not. It's stipulated by the parties or</p> <p>23 the court.</p> <p>24 Q. Do you agree that, based on this class</p> <p>25 definition, there would have to be a</p>	<p style="text-align: right;">Page 104</p> <p>1 court ordered, right?</p> <p>2 A. Correct.</p> <p>3 Q. In this declaration there are a few places</p> <p>4 where you identify information that was</p> <p>5 provided to you by counsel; is that fair?</p> <p>6 A. Yes.</p> <p>7 Q. Is there any other assumptions, facts or data</p> <p>8 supplied to you by counsel that's not</p> <p>9 disclosed in this declaration?</p> <p>10 A. I don't believe so.</p> <p>11 MR. WOLFE: I think I'm probably</p> <p>12 done. Let me have three minutes to talk to</p> <p>13 Mr. Bernstein.</p> <p>14 THE VIDEOGRAPHER: Shall we go off</p> <p>15 the record?</p> <p>16 MR. WOLFE: Yeah, I think we might</p> <p>17 as well.</p> <p>18 THE VIDEOGRAPHER: We are off the</p> <p>19 record. The time is 1:50.</p> <p>20 (Recess.)</p> <p>21 THE VIDEOGRAPHER: We are on the</p> <p>22 record. The time is 1:54.</p> <p>23 BY MR. WOLFE:</p> <p>24 Q. Ms. Peak, have you answered all my questions</p> <p>25 to the best of your ability today?</p>

EXHIBIT 13
CONFIDENTIAL
FILED UNDER SEAL

EXHIBIT 14
CONFIDENTIAL
FILED UNDER SEAL

EXHIBIT 15

CONFIDENTIAL

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RANDOLPH FRESHOUR and)
VINCENZO ALLAN, each)
individually and on behalf)
of similarly situated)
individuals,)
Plaintiffs,)
vs.) No. 1:23-CV-02667
CERENCE, INC., a Delaware)
corporation,)
Defendant.)

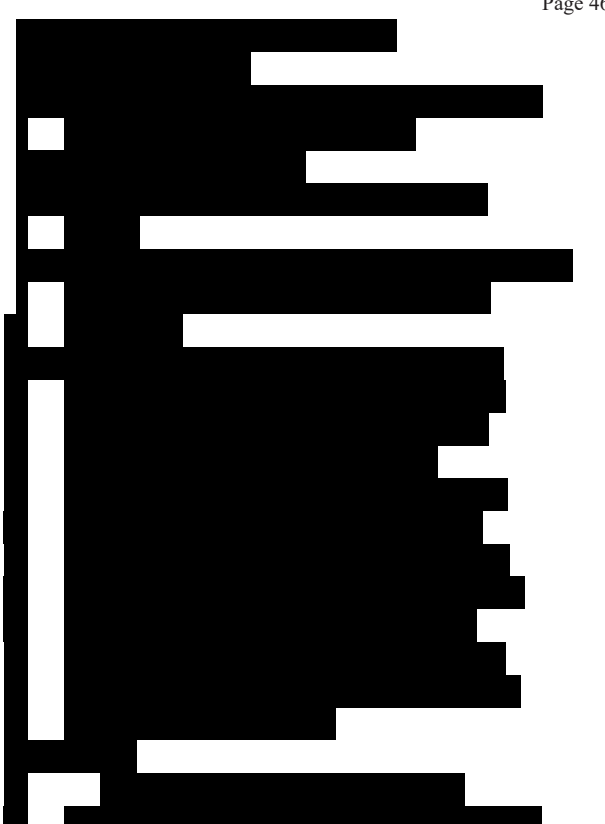
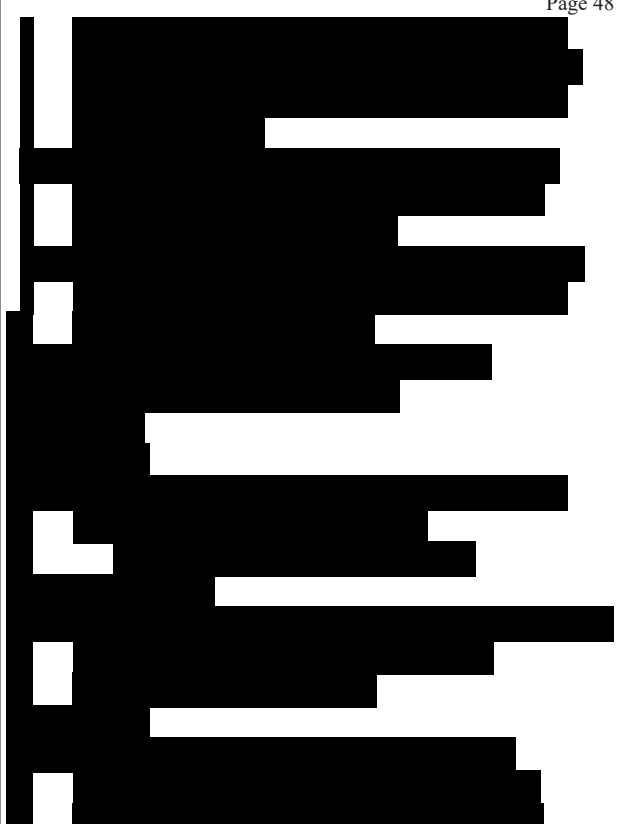
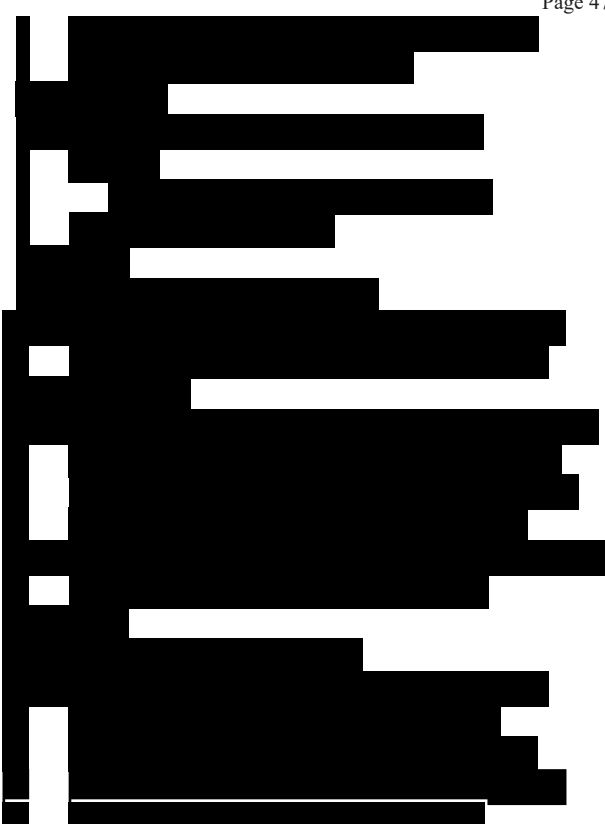
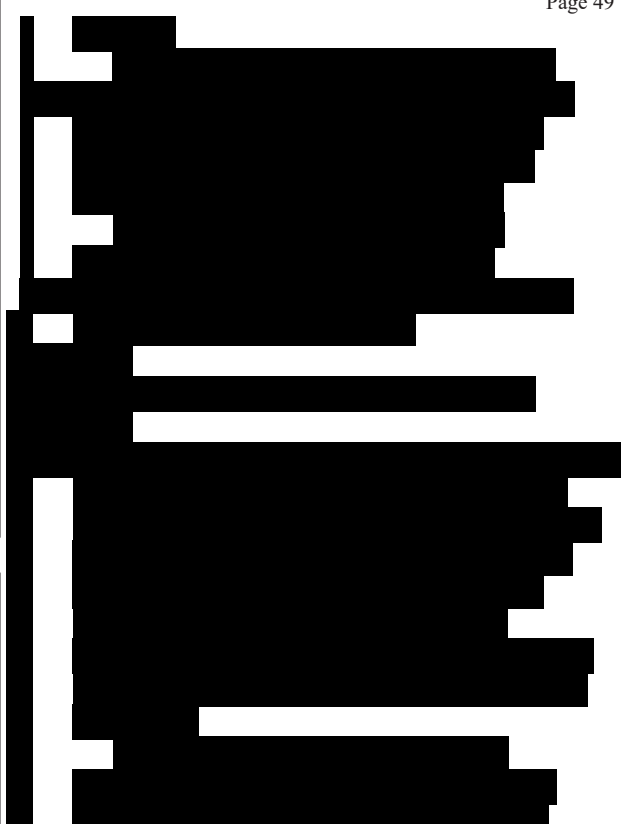
The video deposition of JOHN CASHMAN before
Richard Derrick Ehrlich, Registered Merit Reporter,
Certified Realtime Reporter, taken pursuant to the
Federal Rules of Civil Procedure, at McGuire Law
Offices, 55 W Wacker Drive, Chicago, Illinois,
commencing at 10:00 a.m., on the 20th day of August,
2025.

CONFIDENTIAL

<p style="text-align: right;">Page 38</p> <p>[REDACTED]</p> <p>24 Q What kind of car do you drive?</p> <p>25 A The newest car I have is a Toyota Highlander.</p>	<p style="text-align: right;">Page 40</p> <p>1 A We have three cars. My wife and I have three</p> <p>2 cars.</p> <p>3 Q What are the other two?</p> <p>4 A A 2013 Mazda and a 2014 Toyota Camry, which my</p> <p>5 wife wants me to get rid of both.</p> <p>6 Q Do either of the -- the other two cars, the</p> <p>7 older ones, do they have any Cerence voice or</p> <p>8 speech technology?</p> <p>9 A They don't have any speech technology in either</p> <p>10 of them.</p> <p>11 Q Have you owned a Mercedes in the last six years?</p> <p>12 A No.</p> <p>13 Q Have you leased a Mercedes or rented a Mercedes</p> <p>14 in the last six years?</p> <p>15 A I don't believe I've ever driven a Mercedes</p> <p>16 vehicle in my life.</p> <p>[REDACTED]</p>
<p style="text-align: right;">Page 39</p> <p>1 It's a 2023, I believe.</p> <p>2 Q Is Toyota a Cerence customer?</p> <p>3 A Yes.</p> <p>4 Q What Cerence technology, if any, is in your car?</p> <p>5 A I don't know if we have Cerence technology in my</p> <p>6 car, but I use Apple CarPlay. And I feel</p> <p>7 terrible about it as we're talking about it</p> <p>8 right now.</p> <p>9 Q Do you know if there's any voice or speech</p> <p>10 recognition capability in your --</p> <p>11 A I think there is, yes.</p> <p>12 Q Do you use it?</p> <p>13 A No.</p> <p>14 Q Why don't you use it?</p> <p>15 A Because it's pretty easy to have the system, the</p> <p>16 infotainment system, pair my phone, and I think</p> <p>17 it's -- I think it's cumbersome to set up, and I</p> <p>18 think that the sales guy that showed us the car</p> <p>19 just said, Okay. Just plug your phone in, and</p> <p>20 you're good to go.</p> <p>21 So that's all my wife and I have been</p> <p>22 doing since.</p> <p>23 Q Do you have more than one car?</p> <p>24 A Yes.</p> <p>25 Q How many cars do you have?</p>	<p style="text-align: right;">Page 41</p> <p>[REDACTED]</p>

11 (Pages 38 - 41)

CONFIDENTIAL

<p>Page 46</p>  A large rectangular area of the page is completely blacked out, indicating redacted content. The redaction covers the majority of the page's text area.	<p>Page 48</p>  A large rectangular area of the page is completely blacked out, indicating redacted content. The redaction covers the majority of the page's text area.
<p>Page 47</p>  A large rectangular area of the page is completely blacked out, indicating redacted content. The redaction covers the majority of the page's text area.	<p>Page 49</p>  A large rectangular area of the page is completely blacked out, indicating redacted content. The redaction covers the majority of the page's text area.

13 (Pages 46 - 49)

CONFIDENTIAL

<p>Page 66</p> <p>[REDACTED]</p>	<p>Page 68</p> <p>[REDACTED]</p>
<p>Page 67</p> <p>[REDACTED]</p>	<p>Page 69</p> <p>[REDACTED]</p>

18 (Pages 66 - 69)

CONFIDENTIAL

<p>Page 114</p> <p>[REDACTED]</p>	<p>Page 116</p> <p>[REDACTED]</p>
<p>Page 115</p> <p>[REDACTED]</p>	<p>Page 117</p> <p>[REDACTED]</p>

30 (Pages 114 - 117)

CONFIDENTIAL

<p>Page 118</p> <p>[REDACTED]</p>	<p>Page 120</p> <p>[REDACTED]</p>
<p>Page 119</p> <p>[REDACTED]</p>	<p>Page 121</p> <p>[REDACTED]</p>

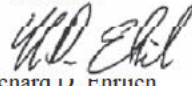
31 (Pages 118 - 121)

CONFIDENTIAL

<p style="text-align: right;">Page 194</p> <p>[REDACTED]</p> <p>25 MR. GESKE: Okay. Now would be a good</p>	<p style="text-align: right;">Page 196</p> <p>1 So, no, there wasn't any real -- from what</p> <p>2 I recall, any real discussion around anything</p> <p>3 and certainly no discussion around what he was</p> <p>4 going to say or anticipating any questions along</p> <p>5 those lines. But we certainly knew he was doing</p> <p>6 a deposition the next day.</p> <p>7 Q Did you talk about the case more generally or</p> <p>8 your views of the case?</p> <p>9 A You know, I don't remember if we did. I mean,</p> <p>10 if we did, it would have been a very small part</p> <p>11 of the conversation. You know, it was mostly</p> <p>12 about let's go out to dinner and have a nice</p> <p>13 time.</p> <p>14 Q Do you remember anything that you guys talked</p> <p>15 about with respect to the case?</p> <p>16 A No, I don't really remember anything. So that</p> <p>17 makes me think we didn't really talk about the</p> <p>18 case at all.</p> <p>19 Q Did you guys talk about your upcoming</p> <p>20 deposition?</p> <p>21 A Yeah. Just some stuff in passing, like, Oh, I'm</p> <p>22 going to be doing it in Chicago; that I'm the</p> <p>23 corporate rep. You know, that I'll be probably</p> <p>24 answering more questions outside of data</p> <p>25 privacy, but nothing -- again, nothing specific.</p>
<p style="text-align: right;">Page 195</p> <p>1 time for a break.</p> <p>2 VIDEOGRAPHER: This is the end of media</p> <p>3 four. We are going off the record. The time is</p> <p>4 4:51 p.m.</p> <p>5 (Break.)</p> <p>6 VIDEOGRAPHER: We are back on the record.</p> <p>7 This is the beginning of media five. The time</p> <p>8 is 5:11 p.m.</p> <p>9 Please proceed.</p> <p>10 BY MR. GESKE:</p> <p>11 Q Thank you for bearing with us, Mr. Cashman. I</p> <p>12 only have a few other questions.</p> <p>13 I think you mentioned earlier that you had</p> <p>14 dinner with Mr. Tropp when he was in Boston?</p> <p>15 A Yes.</p> <p>16 Q Was that before or after his deposition?</p> <p>17 A Before.</p> <p>18 Q Did you guys talk about the deposition?</p> <p>19 A It certainly wasn't a primary part of the</p> <p>20 conversation. Mostly we just talked personal.</p> <p>21 Michael coming into Boston. Was he nervous</p> <p>22 about the deposition. But nothing -- nothing</p> <p>23 like strategy or what he was going to talk</p> <p>24 about. I think he felt comfortable. I'm sure</p> <p>25 he was properly prepared by counsel.</p>	<p style="text-align: right;">Page 197</p> <p>1 None of the specifics or anything like that.</p> <p>[REDACTED]</p>

50 (Pages 194 - 197)

CONFIDENTIAL

<p style="text-align: right;">Page 206</p> <p>[REDACTED]</p> <p>25 MR. WOLFE: I don't have anything else.</p>	<p style="text-align: right;">Page 208</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 I, Richard D. Ehrlich, a Certified Shorthand</p> <p>4 Reporter of the State of Illinois, do hereby certify</p> <p>5 that I stenographically reported the proceedings had,</p> <p>6 and that the foregoing transcript is a true and</p> <p>7 accurate record of the proceedings had therein.</p> <p>8 IN WITNESS WHEREOF, I do set my hand this</p> <p>9 21st day of August 2025.</p> <p>10 </p> <p>11 RICHARD D. EHRLICH</p> <p>12 Certified Shorthand Reporter</p> <p>13 License No. 084.2019</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 207</p> <p>1 MR. GESKE: Okay.</p> <p>2 VIDEOGRAPHER: Is there a signature?</p> <p>3 MR. WOLFE: Yeah.</p> <p>4 VIDEOGRAPHER: We are off the record at</p> <p>5 5:27 p.m., and this concludes today's testimony</p> <p>6 given by John Cashman.</p> <p>7 The total number of media units used was</p> <p>8 five and will be retained by Veritext.</p> <p>9 (Signature reserved.)</p> <p>10 (Video deposition concluded.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 209</p> <p>1 Veritext Legal Solutions</p> <p>2 1100 Superior Ave</p> <p>3 Suite 1820</p> <p>4 Cleveland, Ohio 44114</p> <p>5 Phone: 216-523-1313</p> <p>6 August 21, 2025</p> <p>7 To: Matt Wolfe</p> <p>8 Case Name: Freshour, Randolph Et Al. v. Cerence Inc.</p> <p>9 Veritext Reference Number: 7533291</p> <p>10 Witness: John Cashman Deposition Date: 8/20/2025</p> <p>11 Dear Sir/Madam:</p> <p>12 Enclosed please find a deposition transcript. Please have the witness</p> <p>13 review the transcript and note any changes or corrections on the</p> <p>14 included errata sheet, indicating the page, line number, change, and</p> <p>15 the reason for the change. Have the witness' signature notarized and</p> <p>16 forward the completed page(s) back to us at the Production address</p> <p>17 shown</p> <p>18 above, or email to production-midwest@veritext.com.</p> <p>19 If the errata is not returned within thirty days of your receipt of</p> <p>20 this letter, the reading and signing will be deemed waived.</p> <p>21 Sincerely,</p> <p>22 Production Department</p> <p>23</p> <p>24</p> <p>25 NO NOTARY REQUIRED IN CA</p>

53 (Pages 206 - 209)

Veritext Legal Solutions

www.veritext.com

888-391-3376

EXHIBIT 16

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RANDOLPH FRESHOUR, and) Case No. 23 C 02667
VINCENZO ALLAN, each)
individually and on behalf of)
similarly situated individuals,)
Plaintiffs,)
v.)
CERENCE INC., a Delaware)
corporation,)
Chicago, Illinois)
August 6, 2024)
Defendant.) 9:37 a.m.

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HONORABLE VIRGINIA M. KENDALL

APPEARANCES:

For the Plaintiffs: McGUIRE LAW PC
BY: MR. PAUL T. GESKE
MR. COLIN P. BUSCARINI
55 W. Wacker Drive, 9th Floor
Chicago, Illinois 60601

For the Defendant: SHOOK HARDY & BACON LLP
BY: MR. MATTHEW C. WOLFE
MS. MEHGAN KEELEY
111 S. Wacker Drive, Suite 4700
Chicago, Illinois 60606

Court Reporter: GAYLE A. McGUIGAN, CSR, RMR, CRR
Official Court Reporter
219 S. Dearborn Street, Room 2524A
Chicago, Illinois 60604
312.435.6047
gayle_mcguigan@ilnd.uscourts.gov

* * * * *

PROCEEDINGS REPORTED BY STENOTYPE
TRANSCRIPT PRODUCED USING COMPUTER-AIDED TRANSCRIPTION

1 (Proceedings heard in open court:)

2 THE CLERK: 23 C 2667, Pena versus Cerence.

3 THE COURT: Good morning, everyone.

4 MR. GESKE: Good morning, your Honor. Paul Geske for
5 plaintiffs.

6 MR. BUSCARINI: Good morning, your Honor. Colin
7 Buscarini also for the plaintiffs.

8 THE COURT: Good morning.

9 MS. KEELEY: Good morning. Mehgan Keeley for
10 defendant Cerence.

11 THE COURT: Good morning.

12 MR. WOLFE: Good morning, your Honor. Matt Wolfe,
13 W-O-L-F-E, for Cerence.

14 THE COURT: Good morning.

15 Tell me a bit about your case and what you intend to
16 prove.

17 MR. GESKE: Sure. Well, your Honor, this case was
18 reassigned --

19 THE COURT: Right.

20 MR. GESKE: -- from Judge Maldonado. This is our
21 first time appearing before your Honor. But this is a putative
22 class action involving claims under the Illinois Biometric
23 Information Privacy Act. There's also a counterpart to this
24 case with claims proceeding in state court due to lack of
25 Article III subject matter jurisdiction over those claims.

1 The parties just recently wrapped up pleading motions.
2 And I'm pleased to report we were able to reach an agreement on
3 those motions which resulted in us filing an amended complaint
4 and defendant just recently answering.

5 We've also been working cooperatively with defense
6 counsel. We worked out an agreed proposed discovery schedule,
7 which we submitted on July 22nd.

8 THE COURT: Does the new law impact you at all, the
9 new biometric law in Illinois?

10 MR. GESKE: If I understand the question, is that the
11 law that limits recovery of damages to essentially one
12 violation?

13 Well, I don't have it in front of me, but I think
14 there's some dispute as to whether it applies retroactively.
15 So given that our case was filed before that went into effect
16 and the violations are alleged to occur under the prior version
17 of the statute, I can't say today whether it will. I'm sure
18 that the parties will probably litigate whether the amendment
19 applies retroactively.

20 THE COURT: Okay. What's your position?

21 MS. KEELEY: Our position is that the revised law
22 would apply to limit damages here.

23 THE COURT: I think it said that when I read that. I
24 mean, I only read the article. I didn't read the statute.

25 So what's your position?

1 MS. KEELEY: On the case as a whole? Our position is
2 that the -- as counsel mentioned, we agreed on the amended
3 complaint, and it narrowed the number of products and the types
4 of technology at issue significantly.

5 The type of technology that's still at issue in this
6 case, our position is that it is embedded in the vehicles.
7 Our -- Cerence is a technology company that sells the software
8 to manufacturers like Mercedes, which are the vehicles that the
9 plaintiffs here allege to have owned. And the technology is
10 embedded in the vehicles and not sent back to Cerence. So our
11 position is that if the plaintiffs' voices were indeed somehow
12 saved in the car's technology, it's embedded in that vehicle
13 after it leaves Cerence's hands.

14 So that's our position and what we intend to prove in
15 discovery.

16 THE COURT: Okay. I will adopt your schedule that you
17 proposed to me.

18 Lynn, you can put it in the docket entry for me.

19 And then I would like to see you again before you dig
20 into all of your expert disclosures to see if we can get a
21 status on you.

22 So that would be -- my goodness. Let's say -- I'm
23 looking at your -- let's say May of 2025.

24 THE CLERK: Okay.

25 THE COURT: This schedule is really, really generous,

1 in my book, so make sure that you comply with it because I
2 don't expect that I should need any extensions of time when
3 it's this generous, okay?

4 All right. Thanks very much.

5 MULTIPLE SPEAKERS: Thank you.

6 THE CLERK: Your Honor, did you want to set a status
7 for May 5th at 9:30?

8 THE COURT: That's fine.

9 THE CLERK: Okay.

10 (Concluded at 9:41 a.m.)

11 * * * * *

12 I certify that the foregoing is a correct transcript of the
13 record of proceedings in the above-entitled matter.

14
15 /s/ GAYLE A. McGUIGAN
16 GAYLE A. McGUIGAN, CSR, RMR, CRR
Official Court Reporter

May 28, 2025

EXHIBIT 17

Declaration of Consent under the Data Protection Act

Contribution to Improving Voice Control

Version 902.53.002.A.23-23

Mercedes-Benz AG, Mercedesstr. 120, 70372 Stuttgart, Germany ("Mercedes-Benz") is constantly working on further developing its products and services, improving their quality and adapting them to customer requirements. For these purposes Mercedes-Benz would like to evaluate data from the vehicle and/or data from other services activated by the customer jointly with the language provider Cerence GmbH, Jülicher Straße 376, 52070 Aachen, Germany ("Cerence"). This data can either be transmitted directly from the vehicle and/or forwarded to Mercedes-Benz by Mercedes-Benz USA, LLC ("MBUSA"), 1 Mercedes-Benz Drive, Atlanta, GA 30328 ("controller") as data controller of the Mercedes me connect and smart control services. Mercedes-Benz and Cerence are jointly responsible as data controllers for the data processing within the scope of this consent.

The activation of the "LINGUATRONIC Online Voice Control" or "MBUX Voice Assistant" service by the customer is a required prerequisite for the data processing carried out for the purpose of improving voice control. If the service is deactivated, no data will be processed, even if the customer has given consent.

What categories of data are processed for improvements of voice control?

The following categories of personal data will be processed for the purpose of improving the voice control function, depending on the vehicle equipment:

- Audio data
- Data on the use of the voice control function: e.g. text recognized from the voice request (in particular through automatic transcription) and information about the request (e.g. recognized topic, time and place requested in the weather topic)
- possibly the approximate geolocation of the vehicle at the time of the voice request, if applicable
- technical data of the request (e.g. technical status or data size of the voice request, response time)
- Vehicle and system data (e.g. model series, language set in the infotainment system, current software version)

How will the data be used?

The data collected from the vehicle will be supplemented in the Backend with stored data on the vehicle equipment (e.g. model series). This extended information helps to classify the transmitted data of a vehicle in terms of its quality characteristics (e.g. the microphone functionality).

To optimize the automatic transcription, a maximum of 0.5% of all voice requests are randomly selected and transcribed by humans. In doing this, the voice requests are acoustically distorted, among other things, in order to prevent any attribution to a specific person. At the same time, appropriate measures for secure data processing have been implemented.

The "Messaging" and "Dictation" features do not involve the processing of any personal data for the improvement of voice recognition.

FRESHOUR_000011

For the use of the "LINGUATRONIC Online Voice Control" or "MBUX Voice Assistant" service, the data is transmitted from the vehicle with each voice request. In rare cases, spoken words can be misunderstood as "Hey Mercedes", with the result that the voice control is activated by mistake. The customer recognizes the activation of the voice control on the basis of a system response (e.g. "Yes, please?") or a display on the screen of the head unit. The customer can activate or deactivate the service at any time in the user account. The customer or the driver can also control the transmission of voice data directly in the vehicle.

The processing, storage and use of data for the improvement of voice control is based on an identifier, which is created from several parameters, but does not permit any inferences regarding the vehicle identification number ('VIN'). The pseudonymous data is processed or stored for up to 24 months for the purpose of developing and improving speech recognition and voice control.

The customer agrees that for the aforementioned purposes and in the above-described manner, the above data categories, in particular the vehicle's approximate geolocation, will be transmitted from the vehicle to Mercedes-Benz and Cerence, and/or forwarded by the data controller to Mercedes-Benz, and will be processed by Mercedes-Benz and Cerence as explained above. The processing of the personal data will take place for the aforementioned purposes on the basis of this consent. The consent is given on a voluntary basis. The consent or lack thereof does not have any effect on the provision of the Mercedes me connect and smart control services.

What rights can the customer assert?

The customer can withdraw consent at any time in their user account in the overview of the Terms of Use. From the time of the revocation, no further vehicle data will be transmitted, stored or used for the aforementioned purposes. Revoking consent will not affect the legitimacy of the data processing or other lawful processing that had taken place until the said revocation. In accordance with the legal requirements, the customer has the right to receive information about their personal data, to have the data amended or deleted, to limit the scope of or object to the processing of this data, to exercise their right to data portability and to send a complaint to the data controller, to Mercedes-Benz, Cerence or to a supervisory authority. Mercedes-Benz and Cerence do not store the Customer's personal data for longer than is necessary for the achievement of the aforementioned purposes, unless longer storage is required due to legal retention requirements.

If the Customer allows the vehicle to be used by another driver, the Customer is obligated to inform the other driver about the data processing before the start of the journey.

How can the customer exercise their rights?

To exercise their rights or in the event of questions concerning the processing of customer data within the scope of contributing to the improvement of voice control, the customer can make contact at any time using the following contact details:

- Data controller of the market and Mercedes-Benz as respectively independent data controller:

Mercedes-Benz, Customer Assistance Center Maastricht N.V (CAC), P.O. Box 1456, 6201 BL Maastricht, The Netherlands; email: mercedes_me_connect@cac.mercedes-benz.com; Tel.: 00800 9 7777777 (Toll- free from a landline. Cell phone charges may vary).

Mercedes-Benz USA, LLC

Tel.: (800) 367-6372

Email: connect.usa@cac.mercedes-benz.com

The appointed Data Protection Officer is, respectively: Mercedes-Benz Group AG Chief Officer for Corporate Data Protection, HPC E600, 70546 Stuttgart, Germany.

email: data.protection@mercedes-benz.com.

The customer will find further information concerning data processing and data protection by the data controller and Mercedes-Benz in the Privacy Statement for the Mercedes me connect and smart control services.

- Voice provider as data controller:

Cerence GmbH, Jülicher Straße 376, 52070 Aachen, Germany

The Data Protection Officer appointed by Cerence is: Cerence Data Protection Officer, Jülicher Straße 376, 52070 Aachen, Germany, privacy@cerence.com.

EXHIBIT 18

Declaration of Consent under the Data Protection Act

Contribution to Improving Voice Control

Version 902.53.002.A.23-23

Mercedes-Benz AG, Mercedesstr. 120, 70372 Stuttgart, Germany ("Mercedes-Benz") is constantly working on further developing its products and services, improving their quality and adapting them to customer requirements. For these purposes Mercedes-Benz would like to evaluate data from the vehicle and/or data from other services activated by the customer jointly with the language provider Cerence GmbH, Jülicher Straße 376, 52070 Aachen, Germany ("Cerence"). This data can either be transmitted directly from the vehicle and/or forwarded to Mercedes-Benz by Mercedes-Benz USA, LLC ("MBUSA"), 1 Mercedes-Benz Drive, Atlanta, GA 30328 ("controller") as data controller of the Mercedes me connect and smart control services. Mercedes-Benz and Cerence are jointly responsible as data controllers for the data processing within the scope of this consent.

The activation of the "LINGUATRONIC Online Voice Control" or "MBUX Voice Assistant" service by the customer is a required prerequisite for the data processing carried out for the purpose of improving voice control. If the service is deactivated, no data will be processed, even if the customer has given consent.

What categories of data are processed for improvements of voice control?

The following categories of personal data will be processed for the purpose of improving the voice control function, depending on the vehicle equipment:

- Audio data
- Data on the use of the voice control function: e.g. text recognized from the voice request (in particular through automatic transcription) and information about the request (e.g. recognized topic, time and place requested in the weather topic)
- possibly the approximate geolocation of the vehicle at the time of the voice request, if applicable
- technical data of the request (e.g. technical status or data size of the voice request, response time)
- Vehicle and system data (e.g. model series, language set in the infotainment system, current software version)

How will the data be used?

The data collected from the vehicle will be supplemented in the Backend with stored data on the vehicle equipment (e.g. model series). This extended information helps to classify the transmitted data of a vehicle in terms of its quality characteristics (e.g. the microphone functionality).

To optimize the automatic transcription, a maximum of 0.5% of all voice requests are randomly selected and transcribed by humans. In doing this, the voice requests are acoustically distorted, among other things, in order to prevent any attribution to a specific person. At the same time, appropriate measures for secure data processing have been implemented.

The "Messaging" and "Dictation" features do not involve the processing of any personal data for the improvement of voice recognition.

ALLAN_000049

For the use of the "LINGUATRONIC Online Voice Control" or "MBUX Voice Assistant" service, the data is transmitted from the vehicle with each voice request. In rare cases, spoken words can be misunderstood as "Hey Mercedes", with the result that the voice control is activated by mistake. The customer recognizes the activation of the voice control on the basis of a system response (e.g. "Yes, please?") or a display on the screen of the head unit. The customer can activate or deactivate the service at any time in the user account. The customer or the driver can also control the transmission of voice data directly in the vehicle.

The processing, storage and use of data for the improvement of voice control is based on an identifier, which is created from several parameters, but does not permit any inferences regarding the vehicle identification number ('VIN'). The pseudonymous data is processed or stored for up to 24 months for the purpose of developing and improving speech recognition and voice control.

The customer agrees that for the aforementioned purposes and in the above-described manner, the above data categories, in particular the vehicle's approximate geolocation, will be transmitted from the vehicle to Mercedes-Benz and Cerence, and/or forwarded by the data controller to Mercedes-Benz, and will be processed by Mercedes-Benz and Cerence as explained above. The processing of the personal data will take place for the aforementioned purposes on the basis of this consent. The consent is given on a voluntary basis. The consent or lack thereof does not have any effect on the provision of the Mercedes me connect and smart control services.

What rights can the customer assert?

The customer can withdraw consent at any time in their user account in the overview of the Terms of Use. From the time of the revocation, no further vehicle data will be transmitted, stored or used for the aforementioned purposes. Revoking consent will not affect the legitimacy of the data processing or other lawful processing that had taken place until the said revocation. In accordance with the legal requirements, the customer has the right to receive information about their personal data, to have the data amended or deleted, to limit the scope of or object to the processing of this data, to exercise their right to data portability and to send a complaint to the data controller, to Mercedes-Benz, Cerence or to a supervisory authority. Mercedes-Benz and Cerence do not store the Customer's personal data for longer than is necessary for the achievement of the aforementioned purposes, unless longer storage is required due to legal retention requirements.

If the Customer allows the vehicle to be used by another driver, the Customer is obligated to inform the other driver about the data processing before the start of the journey.

How can the customer exercise their rights?

To exercise their rights or in the event of questions concerning the processing of customer data within the scope of contributing to the improvement of voice control, the customer can make contact at any time using the following contact details:

- Data controller of the market and Mercedes-Benz as respectively independent data controller:

Mercedes-Benz, Customer Assistance Center Maastricht N.V (CAC), P.O. Box 1456, 6201 BL Maastricht, The Netherlands; email: mercedes_me_connect@cac.mercedes-benz.com; Tel.: 00800 9 7777777 (Toll- free from a landline. Cell phone charges may vary).

Mercedes-Benz USA, LLC

Tel.: (800) 367-6372

Email: connect.usa@cac.mercedes-benz.com

The appointed Data Protection Officer is, respectively: Mercedes-Benz Group AG Chief Officer for Corporate Data Protection, HPC E600, 70546 Stuttgart, Germany.

email: data.protection@mercedes-benz.com.

The customer will find further information concerning data processing and data protection by the data controller and Mercedes-Benz in the Privacy Statement for the Mercedes me connect and smart control services.

- Voice provider as data controller:

Cerence GmbH, Jülicher Straße 376, 52070 Aachen, Germany

The Data Protection Officer appointed by Cerence is: Cerence Data Protection Officer, Jülicher Straße 376, 52070 Aachen, Germany, privacy@cerence.com.

EXHIBIT 19
CONFIDENTIAL
FILED UNDER SEAL